SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 340

ETIENNE DUGAS, PETITIONER,

vs.

AMERICAN SURETY COMPANY OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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UNITED STATES OF AMERICA.

DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 20,782 (In Equity).

AMERICAN SURETY COMPANY OF NEW YORK,

versus

ETIENNE DUGAS, ET ALS.

Appearances:

Messrs. I. E. Uzzo and James J. Landry, Attorneys for Etienne Dugas, Appellant.

Messrs. Denegre, Leovy & Chaffe, Attorneys for American Surety Company of New York, Appellee.

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 23rd day of May, 1935, at the City of New Orleans, Louisiana.

Extensions of time granted by the Honorable the United States Circuit Court of Appeals for the Fifth Circuit, bringing the return day up to and including the 15th day of November, 1935.

TRANSCRIPT OF THE RECORD.

PETITION AND BILL OF INTERPLEADER.

2 Filed June 6, 1931.

United States District Court, Eastern District of Louisiana, New Orleans Division.

American Surety Company of New York,
vs. No. 20782.
Etienne Dugas, et als.

To the Honorable the United States District Court for the Eastern District of Louisiana:

The petition and bill of interpleader of the American Surety Company of New York respectfully shows:

1.

American Surety Company of New York, plaintiff herein, now is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the State of New York, domiciled in the City of New York in the said State, doing business as a surety company in New York and other states of the Union, including Louisiana, in which latter state plaintiff was and is qualified to do business, having complied with all of the applicable laws of the said state as to foreign corporations.

2.

On February 12, 1930, plaintiff executed as surety a bond for Lumberman's Reciprocal Association (a corporation organized and existing under the laws of the State of Texas and domiciled in the City of Houston in the said State) as principal in the penal sum of Twenty Thousand Dollars ($20,000.00) in favor of the Governor of the State of Louisiana conditioned

that the said Lumberman's Reciprocal Association shall make prompt payment of all claims arising and accruing to any person during the term of said bond, by virtue of any policy, or policies, issued by it upon the life or person of any citizen of the State of Louisiana, or upon any property situated in said state, whenever such payment may become due, and shall faithfully comply with and perform all and singular the duties and obligations imposed upon it, under and by reason of the provisions of an Act of the General Assembly of the State of Louisiana, approved July 3rd, 1908, Act 172, and entitled "An Act requiring fire, life, accident and other kinds of Insurance Companies, other than Surety and Fidelity and Fraternal Societies, and Insurance Companies insuring against the breakage of plate glass only organized under the laws of other States, to give bond payable to the State Treasurer conditioned for the prompt payment of all claims arising in this State, and providing penalties for the Enforcement of this Act." which said bond was duly filed with and accepted by the Secretary of State of the State of Louisiana. Said association had been doing business in Louisiana for several years and had similarly furnished several similar bonds similarly filed and accepted. Each of said bonds, under the provisions of said Act 172 of 1908 and under the law, was canceled by its successor, the last thereof being
3 canceled by the bond executed on February 12, 1930, hereinabove described.

A copy of the said bond is attached hereto as part hereof, marked Surety 1.

3.

The business of said Lumberman's Reciprocal Association which was chiefly the writing of workmen's compensation insurance brought it within the description of "all fire, life, accident and other kinds of in-

surace companies other than fidelity and surety and fraternal societies and insurance companies insuring against the breakage of plate glass only" as contained in the Louisiana Statute referred to in the bond, copy of which is attached hereto, marked Surety 1.

4.

On July 31, 1930, one Wright Morrow was by the Ninety Eighth District Court for Travis County, Texas, in the matter entitled State of Texas vs. Lumberman's Reciprocal Association, No. 48,596 of the Docket of the said Court, appointed Receiver of said Lumberman's Reciprocal Association, and said Association is still in the hands of said Receiver.

5.

There are two suits pending against petitioner under its said bond of February 12, 1930. One of these suits is entitled Etienne Dugas vs. American Surety Company of New York, No. 188-642 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana, and in it a judgment was on April 14th, 1931, entered in favor of the plantiff therein against the defendant therein (the plaintiff herein) requiring the payment of $20.00 a week for a period not to exceed three hundred weeks, as will more fully appear from copy of the said judgment hereto attached as part hereof and marked, Surety 2. The said judgment being duly signed the defendant, your plaintiff, obtained an order of appeal to the Court of Appeal for the Parish of Orleans, in which Court the matter is now set down for argument on June 9, 1931.

The other of the two pending suits is entitled Hardy B. Brown vs. Weber-King Manufacturing Company, No. 7845 of the 11th Judicial Court for the Parish of

Vernon, State of Louisiana. In that case the said Brown brought suit against his employer, Weber-King Manufacturing Company, for compensation for a period of four hundred weeks at the rate of $13.65 a week, and the said employer has called your plaintiff as a defendant in warranty. The said suit has been set for trial at Leesville, Louisiana, June 15, 1931.

6.

Plaintiff avers on information furnished by the Receiver of the Lumberman's Reciprocal Association that the claims against its said bond of February 12, 1930, are far in excess of the amount of the said bond, and plaintiff therefore desires to deposit in the Registry of this Court the amount of its said bond and to call in the various claimants to assert their claims against the said fund.

4

7.

Of the claimants Williams Brothers, Inc., now is and at all times herein mentioned was a citizen of the State of Nevada, being domiciled in the City of Reno in the said State; and Howard Kenyon Dredging Company now is and at all times herein mentioned was a citizen of the State of Texas, being domiciled in the City of Houston in the said State; and S. Glasper now is and at all times herein mentioned was a citizen of the State of Texas, domiciled in the City of Rayville in the said state; and Rosie McCaa now is and at all times herein mentioned was a citizen of the State of Oklahoma, being domiciled in the City of Oklahoma City in the said state.

8.

Of the claimants Jules Sentiere now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, domiciled in the City of Frank-

lin in the Parish of St. Mary in the State of Louisiana; and Bill Lawson now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, domiciled in the City of New Orleans in the State of Louisiana; and Paul Augustine now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, domiciled in the City of New Orleans, in the State of Louisiana; and the Douglas Public Service Corporation now is and at all times herein mentioned was a citizen and resident of the State of Louisiana, being a corporation organized and existing under the laws of the said state and domiciled in the City of New Orleans in the State of Louisiana.

9.

This Court has jurisdiction because this is a bill of interpleader in equity brought by a surety company against bona fide adverse claimants against its bond of February 12, 1930, two or more of whom are citizens of different states, and one or more of said adverse claimants resides or reside within the territorial jurisdiction of this Court, all within the provisions of Act of Congress of May 8, 1926, entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader" 44 Stat. at Large, p. 416.

10.

Plaintiff disclaims any interest in the amount of its said bond except to pay same to the persons lawfully entitled thereto and is desirous of paying the amount of its said bond into Court for distribution among those lawfully entitled thereto after the payment of all lawful costs.

11.

By reason of the conflicting claims against the said bond, and the fact that claims already known to plaintiff greatly exceed the amount of the said bond, plaintiff is in grave danger of being greatly harrassed and damaged, and cannot safely make payments to any claimant without the aid of this Court.

12.

Plaintiff, with the permission of this Court first obtained, has paid into the Registry of this Court the said sum of $20,000.00, the amount of said bond, to abide the judgment of this Court.

13.

Plaintiff has as yet had comparatively few claims with it against its said bond; but it attaches hereto as part hereof marked Surety 3, a list of claimants (including those filed with it) and the address of each based on information furnished it by the Receiver of the Lumberman's Reciprocal Association as valid claims; and plaintiff desires that each of the said claimants be cited as a defendant herein. Plaintiff avers on information and belief that all of said claims are bona fide claims. Plaintiff has no information as to the existence of any other claimants.

On the said list plaintiff has indicated by the letter (a) the name of each assured or employer and by the letter (b) the name of each employee or claimant other than the assured. All claims marked (b) grow out of the policy or policies issued by the Lumberman's Reciprocal Association to the assured or employer listed just above the claims so marked (b).

Plaintiff is unable to show as to each corporate claimant full information as to the state under whose laws it was organized or its domicile, but plaintiff submits that this is immaterial in the present case (full information being given as to more than enough claimants to establish jurisdiction) and plaintiff has given all information within its possession at this time.

Plaintiff shows also on the said list the amount of some of the said claims based on information furnished it by the Receiver of the Lumberman's Reciprocal Association, but as to many of the claims plaintiff has no such information and has no independent knowledge of the correctness of the amounts that are shown.

Wherefore, plaintiff prays,

1. That it be authorized and directed to deposit in the Registry of this Court the sum of $20,000.00.

2. That Etienne Dugas and Weber-King Manufacturing Company, Incorporated, and all of the other claimants shown on the list hereto attached marked Surety 3 be cited to interplead and settle between themselves their rights or claims to the amount of plaintiff's bond deposited herein as aforesaid.

3. That said Etienne Dugas and Weber-King Manufacturing Company, Incorporated, and the other defendants herein be temporarily restrained and enjoined by order of this Court from instituting or prosecuting in any State Court or in any other Federal Court any suit on account of any right or claim growing out of said bond, or any similar previous bond, and that this injunction may be perpetuated by the final decree herein.

6 4. That an order be entered immediately restraining and enjoining Etienne Dugas and Weber-King Manufacturing Company, Incorporated,

and each of them, their attorneys and all persons acting under their authority, and each of them, from suing or taking any steps to sue or doing anything towards the prosecution of any suit or proceeding (and in particular their suits above referred to) in any State Court, or in any other Federal Court on any claim arising out of or connected with its bond dated February 12, 1930, or any similar previous bond.

5. That plaintiff be released from all further liability on account of said bond, or any similar previous bonds, upon a determination being had as to the amount due thereon, and upon the payment by plaintiff of a sum, if any be found due thereon, over and above the fund heretofore paid into the Registry of this Court.

6. For all costs and a reasonable attorney's fee to be fixed by the Court and such other and further relief as may be necessary or proper in the premises.

(Signed) DENEGRE, LEOVY & CHAFFE,
Attys.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared Lawrence P. McGee, who, being first duly sworn, deposes and says that he is the Resident Manager of American Surety Company of New York, and that all superior officers are absent from the State of Louisiana; affiant further deposes and says that he has read the foregoing petition and that the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief, and that he verily believes the same to be true and correct.

(Signed) LAWRENCE P. McGEE.

Sworn to and subscribed before me at New Orleans, Louisiana, this the 5th day of June, 1931.

(Signed) LLOYD A. RAY,
(Seal) Notary Public.

7 State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared Harry McCall, who, being first duly sworn, deposes and says that he is a member of the law firm of Denegre, Leovy and Chaffe, attorneys for the American Surety Company of New York, plaintiff in this matter; affiant further deposes and says that the facts and allegations set forth in the above petition are true and correct to the best of his knowledge, information and belief, and that he verily believes the same to be true and correct; affiant further deposes and says that he is personally familiar with the proceedings in the suits of Etienne Dugas vs. American Surety Company of New York, No. 188-642 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana, and No. 13,886 of the Docket of the Court of Appeal for the Parish of Orleans, State of Louisiana, and with the proceedings in the matter of Hardy B. Brown vs. Weber-King Manufacturing Company, Incorporated, No. 7845 of the Docket of the 11th Judicial Court for the Parish of Vernon, State of Louisiana; that affiant has personally handled the defense of the American Surety Company of New York in the Dugas Suit and that it is absolutely essential that a restraining order be obtained preventing any further action in the said suit which is set down for hearing before the Court of Appeal for the Parish of Orleans, State of Louisiana, on June 9th, 1931.

As to the suit of Hardy B. Brown vs. Weber-King Manufacturing Company, Inc., above stated, affiant shows that this matter is set down for trial before the 11th Judicial Court for the Parish of Vernon, State of Louisiana, on June 15th, 1931, and it is therefore essential that an order be obtained restraining the further prosecution of that suit. Affiant is of counsel for defendant, although not counsel of record

in said suit, and is personally familiar with the pleadings and proceedings therein. As to the remaining allegations of said petition, affiant shows that his knowledge is based on data obtained from the Receiver of the Lumberman's Reciprocal Association and that affiant believes the same to be true and correct.

(Sgd.) HARRY McCALL.

Sworn to and subscribed before me at New Orleans, La., on this the 5th day of June, 1931.

(Sgd.) LLOYD A. RAY,
(Seal) Notary Public.

ORDER.

Considering the foregoing petition and the affidavit thereto, it is ordered that the plaintiff American Surety Company of New York be and it hereby is authorized to deposit in the Registry of this Court the sum of Twenty Thousand Dollars ($20,000.00).

(Signed) WAYNE G. BORAH, Judge.

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8. TEMPORARY RESTRAINING ORDER.

Filed June 6, 1931.

(Title Omitted.)

Upon reading the bill of complaint and affidavits herein, and it appearing from the facts shown by the verified bill that before notice can be served and a hearing had on plaintiff's application for a preliminary injunction herein, or on plaintiff's application for a restraining order, immediate and irreparable injury, loss and damage will result to the plaintiff, to-wit, that proceedings will be taken in the following suits

pending against plaintiff in which separate claims are asserted against the very bond, the full amount of which is herein deposited:

Etienne Dugas vs. American Surety Company of New York, No. 188-642 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana, and No. 13-886 of the Docket of the Court of Appeal for the Parish of Orleans, State of Louisiana, and

Hardy B. Brown vs. Weber King Manufacturing Company, Incorporation, No. 7845 of the Docket of the Eleventh Judicial District Court for the Parish of Vernon, State of Louisiana.

and that as a result of such proceedings plaintiff will be subjected to a multiplicity of litigation and exposed to a possibility of double liability.

Now, Therefore, It Is Ordered, Adjudged and Decreed, that Etienne Dugas and Weber King Manufacturing Company, Incorporated, defendants herein, and each of them, their attorneys and all persons acting under their authority, and each of them, be, and each of them hereby is, restrained and enjoined from suing, or taking any steps to sue, or doing anything towards the prosecution of any suit or proceeding in any State Court or in any other Federal Court on any claim arising out of or connected with bond dated February 12, 1930, signed by the said Company as surety, and the Lumbermen's Reciprocal Association as principal, under and in accordance with Act No. 172 of the General Assembly of the State of Louisiana passed at the Regular Session of 1908, or any similar previous bond.

This restraining order shall become effective without the giving of security by the plaintiff.

This restraining order will remain in force only until the hearing and determination of the application for a preliminary injunction herein, and shall expire ten days after entry, unless within said time it is extended for a like period for good cause shown.

It is Further Ordered, that a copy of this order be served upon Etienne Dugas and Weber King Manufacturing Company, Incorporated, the defendants hereby restrained, and upon I. E. Uzzo and James J. Landry, attorneys of Etienne Dugas, and Thompson & Ferguson, attorneys of Weber King Manufacturing Company, Incorporated.

This order signed and issued this 5th day of June, 1931, at 3:00 o'clock P. M.

(Sig.) WAYNE G. BORAH, Judge.

ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE.

10 Filed June 6, 1931.

(Title Omitted.)

On motion of the plaintiff herein,

It Is Ordered, that the application for a preliminary injunction herein be heard in the Court room of the United States District Court at New Orleans, Louisiana, on June 24, 1931, at 10:00 o'clock, A. M., and that the defendants and each of them be ordered then and there to show cause if any they can, why a preliminary injunction should not issue as prayed for, restraining and enjoining them, and each of them, their attorneys and all persons acting under their authority from suing, or taking any steps to sue, or doing anything toward the prosecution of any suit or proceeding in any State Court or in any other Federal Court on any claim arising out of or connected with bond dated

February 12, 1930, signed by the American Surety Company of New York as surety and by the Lumbermen's Reciprocal Association as principal, under and in accordance with Act No. 172 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1908, or any similar previous bond.

WAYNE G. BORAH, Judge.

New Orleans, Louisiana, June 5, 1931.

EXHIBIT BEING JUDGMENT OF CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, IN MATTER ENTITLED "ETIENNE DUGAS VS. AMERICAN SURETY CO., No. 188-642.

11 Filed in U. S. Dist. Court Jun. 6, 1931.

Civil District Court Parish of Orleans, State of Louisiana.

No. 188-642 Division "A" Docket No. 4.

Etienne Dugas,
vs.
American Surety Company of New York.

Judgment

This cause came up for argument this day, Present:

I. E. Uzzo and James J. Landry, attorneys for plaintiff;

Harry McCall and J. H. Morrisson, Jr., attorneys for the defendant, American Surety Company of New York.

Lumbermen's Reciprocal Association and its Receiver, Wright Morrow.

When after considering the evidence, pleadings and argument of counsel, the law and the evidence being in favor of plaintiff, for the reasons orally assigned;

It Is Ordered, Adjudged and Decreed, that there be judgment in favor of plaintiff, Etienne Dugas, and against the defendant, the American Surety Company of New York, in the sum of twenty ($20.00) dollars a week, commencing May 15th, 1930, and such payments to continue until a total of not more then three hundred weeks have been paid, unless, as to future payments, this judgment be modified because of the improved condition of plaintiff health, and for all costs of this procedure.

It Is Further Ordered, Adjudged And Decreed, That There Be Further judgment in favor of plaintiff, Etienne Dugas and against the said defendant, American Surety Company of New York, in the sum of two hundred and fifty ($250.00) dollars, for medical bills, reserving to said defendant the right to pay
12 out of this sum, one hundred and sixty ($160.00) dollars, directly to the Charity Hospital and thus discharge itself, protanto, in so far as plaintiff, Eteinne Dugas, is concerned.

It Is Further Ordered, Adjudged And Decreed, that on the call in warranty of the American Surety Company of New York, there be judgment in favor of the said American Surety Company of New York, and against the defendant, Lumbermen's Reciprocal Association and its Receiver, Wright Marrow, as such, in solido, in the amount and to the same extent as is hereinabove rendered in favor of the plaintiff and against the said American Surety Company of New York.

Judgment read and rendered in open Court this 14th day of April, 1931.

Judgment read and signed in open Court this 20 day of April, 1931.

(Sgd.) H. C. CAGE,
Judge.

SUSPENSIVE APPEAL BOND IN 188-642 OF CIVIL DISTRICT COURT.

13 Filed in U. S. Dist. Court June 6, 1931.

Know All Men By These Presents, That we, American Surety Company of New York, as principal, and New York Casualty Company, State of New York, as surety, are held and firmly bound unto John J. O'-Neill, Clerk of the Civil District Court, for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Ten Thousand and 00/100 ($10,000.00) dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal and dated in the City of New Orleans on this 27th day of April, in the year of our Lord one thousand nine hundred and thirty-one.

Whereas, the above bounden American Surety Company of New York has this day filed a motion of appeal from a final judgment rendered against American Surety Company of New York, in the suit of Etienne Dugas versus American Surety Company of New York. No. 188,642 of the Civil District Court for the Parish of Orleans on the 14th day of April 1931, and signed on the 20th day of April 1931.

Now The Condition of the Above Obligation is Such, That the above bounden American Surety Company of New York shall prosecute diligently its appeal, and shall satisfy whatever judgment may be rendered

against it or that the same shall be satisfied by the proceeds of its estate real or personal, if it be cast in the appeal, otherwise that the said New York Casualty Company, State of New York, shall be liable in its place.

AMERICAN SURETY COMPANY OF NEW YORK,
By H. McGEE,
Manager.
NEW YORK CASUALTY COMPANY,
By HILTON SANDOZ,
Res. Vice President.

Attest:

WALKER A. GARROTT,
Res. Assistant Secretary.

Bond No. 5923-E.

Signed, sealed and delivered in the presenc of:
J. H. MORRISON,
C. E. GRANDER.

QUALIFYING BOND OF LUMBERMEN'S RECIPROCAL ASSOCIATION WITH AMERICAN SURETY CO. OF N. Y. AS SURETY.

14 Filed June 6, 193.

Bond Under Act 172 of 1908.

State of .....,
Parish (or County) of .....,
City of .....

Know all Men by These Presents, That we, Lumbermen's Reciprocal Association Insurance Company as principal and American Surety Company of New

York, Surety Company, as surety, are held firmly bound unto His Excellency Huey P. Long, Governor of Louisiana, or his successors in office, in the following sums, to-wit:

Lumbermen's Reciprocal Association Insurance Company as principal in the full sum of Twenty Thousand Dollars ($20,000.00) and American Surety Company of New York Surety Company, in the full sum of Twenty Thousand Dollars ($20,000.00), current money of the United States of America, which we promise to pay him or to his successors in office, for faithful performance of which we bind ourselves by these presents for the amount of the bond thus entered into by us.

Conditions of this Bond.

Now, Therefore, if the said Lumbermen's Reciprocal Association Insurance Company shall make prompt payment of all claims arising and accruing to any person during the term of said bond, by virtue of any policy, or policies, issued by it upon the life or person of any citizen of the State of Louisiana, or upon any property situated in said State, whenever such payment may become due, and shall faithfully comply with and perform all and singular the duties and obligations imposed upon it, under and by reason of the provisions of an Act of the General Assembly of the State of Louisiana, approved July 3rd, 1908, Act 172, and entitled,

"An Act requiring fire, life accident and other kinds of Insurance companies, other than surety and fidelity and fraternal societies, and insurance companies insuring against breakage of plate glass only organized under the laws of other States, to give bond payable to the State Treasurer conditioned for the prompt payment of all claims arising in this State, and providing penalties or the enforcement of this Act."

then this obligation shall become null and void; otherwise to remain in full force and effect.

In faith whereof, We have signed these presents at Houston, Texas, this 12th. day of February, 1930,

LUMBERMEN'S RECIPROCAL ASSOCIATION,
By CHRISTIE & HOBBY, INC.,
Atty-in-Fact.
C. S. MOHILL,
Vice-President,
As principal for $20,000.00.
AMERICAN SURETY COMPANY OF N. Y.,
By W. W. SCHOELMAN,
Attorney-in-Fact,
As surety for $20,000.00.
By B. D. DODGE,
(Seal) Countesignor.

in presence of:

M. B. RANKIN.

.....

Countersigned:
By HILTON SANDOZ,
At New Orleans, La.

EXCEPTION OF ETIENNE DUGAS OF NO RIGHT OR CAUSE OF ACTION.

15 Filed Jun. 23, 1931.

(Title Omitted.)

Now into Court, comes Etienne Dugas, made one of the defendants herein, and appearing first, solely for

the purpose of excepting to complainant's bill, respectfully shows, that the bill of complaint herein filed discloses no right or cause of action; and, that it particularly discloses no ground for a bill of interpleader, nor for the injunctive relief prayed for therein.

Wherefore, defendant, Etienne Dugas, prays that these exceptions be maintained; that the said bill of complaint or interpleader, herein filed, be dismissed at complainant's cost, insofar as this defendant is concerned and that the injunctive relief prayed for, be denied.

(Signed) I. E. UZZO & JAMES J. LANDRY,
Attorneys for Defendant.

I hereby certify that I am one of the attorneys for Etienne Dugas, one of the defendants herein; that the foregoing exceptions are in my opinion well founded in law and equity and are not filed merely for the purposes of delay.

(Sgd.) JAMES J. LANDRY.

---

16 PLEA OF ESTOPPEL.

Filed Jun. 23, 1931.

Plea of Estoppel.

(Title Omitted.)

Now into Court, comes Etienne Dugas, made one of the defendants herein, and reserving all of his rights under the exceptions heretofore filed, should same be

overruled and especially pleads estoppel to the right of plaintiff to implead him herein, for the following reasons, to-wit:

1.

That by reason of a final judgment rendered by the Civil District Court for the Parish of Orleans, State of Louisiana, No. 188-642 of the docket of said Court, in the proceedings entitled, Etienne Dugas vs. American Surety Company of New York, rendered on the 14th. day of April, 1931 and signed on the 20th. day of April, 1931, a certified copy of which is made a part of and attached to bill of complaint herein and is made part hereof as if copied in existenso, the plaintiff in these proceedings was cast as shown by copy of said judgment, after a full and fair hearing, all parties being present; the plaintiff itself being benefited by said judgment to the full extent prayed for by itself, except to the extent that it was cast in judgment in favor of this defendant.

2.

That in order to suspend the execution of said judgment, the plaintiff herein did appeal from the said judgment in accordance with the laws of Louisiana and did execute its obligation, separate and distinct from the original obligation sued on, in the sum of $10,000.00, that it would diligently prosecute said appeal and gave security conditioned to that effect and further that the plaintiff herein would satisfy any judgment rendered against it by the Court of Appeals, all as will more fully appear by reference to a duly certified copy of said bond hereto attached and made a part hereof.

3.

That the plaintiff by reason of the foregoing facts and various other allegations of its petition, is not and

cannot be impartial nor said to be without interest in the distribution of said fund.

Wherefore, defendant prays that this plea of estoppel be maintained and that the plaintiff's bill of interpleader be dismissed insofar as, he, Etienne Dugas is concerned, at plaintiff's cost.

(Sgd.) I. E. UZZO & JAMES J. LANDRY,
Attorneys for Defendant.

17 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared, James J. Landry, who being duly sworn, deposes and says:

That he is one of the attorneys for the defendant hereinabove named; that he has prepared the foregoing plea of estoppel; that the allegations of fact therein contained are true and correct to the best of his knowledge and belief; that the defendant Etienne Dugas, resides in the Parish of Iberia, Louisiana, is ill and unable to conveniently appear for the purpose of making this affidavit.

(Sgd.) JAMES J. LANDRY.

Sworn to and subscribed before me this 20th. day of June, 1931.

(Sgd.) I. E. UZZO,
(Seal) Notary Public.

---

18 ANSWER OF ETIENNE DUGAS.

Filed June 23, 1931.

(Title Omitted.)

And now into Court, comes Etienne Dugas, made one of the defendants herein, first reserving all of his

rights under the exceptions and plea of estoppel, heretofore filed, should same be overruled, and in obedience to an order signed by this Honorable Court, on the 5th. day of June, 1931, to show cause why a preliminary injunction should not issue herein, as prayed for by plaintiff, with respect, shows:

1.

That he admits the allegations of Art. 1, of the bill of interpleader.

2.

That he admits the allegations of Art. 2, of the bill of interpleader.

3.

That he admits the allegations of Art. 3, of the bill of interpleader.

4.

That he admits the allegations of Art. 4, of the bill of interpleader.

5.

That he admits the allegations of the first paragraph of Art. 5, of the bill of interpleader and further alleges that the judgment therein referred to, was signed on the 20th. day of April, 1931; that thereupon, as alleged by plaintiff, it appealed from the said judgment and suspended execution thereon by executing its bond, made payable to the Clerk of the Civil District Court for the Parish of Orleans, State of Louisiana or his successors in office, with the New York Casualty Company as surety thereon in the sum of $10,000.00, con-

ditioned that the plaintiff herein would diligently prosecute said appeal and satisfy such judgment as might be finally rendered against it, all as will be more fully seen by reference to a duly certified copy of said bond, hereto attached and made a part hereof as if reiterated herein in extenso.

For lack of sufficient information to justify belief, the defendant denies the allegations of the second paragraph of plaintiff's bill of interpleader.

6.

That for lack of sufficient information to justify belief, the defendant denies the allegations of Art. 6, of plaintiff's bill of interpleader, but alleges that even were they true, these would afford no ground for a bill of interpleader, in that, this article fails to allege that any demands have been made upon plaintiff, to satisfy the claims therein referred to.

19

7.

That for lack of sufficient information to justify belief, this defendant denies Art. 7, of the plaintiff's bill of interpleader.

8.

That for lack of sufficient information to justify belief, this defendant denies Art. 8, of plaintiff's bill of interpleader.

9.

That for lack of sufficient information to justify belief, this defendant denies Art. 9, of plaintiff's bill

of interpleader and further alleges that this is more certainly so, insofar as this defendant is concerned, for the reasons that the plaintiff has had its day in Court and has suffered judgment to be rendered against it and has further executed a separate and distinct obligation to this defendant, as more fully shown by defendant's answer to the first paragraph of Art. 5, of said bill of interpleader.

10.

This defendant denies the allegations of Art. 10, of plaintiff's bill of interpleader, for the following reasons, to-wit:

1. Plaintiff having permitted judgment to be rendered against it by this defendant, cannot now claim that it is without interest in said fund.

2. That the sole and only purpose of this bill of interpleader is an attempt to deprive this defendant of the advantage gained by him by reason of the judgment referred to and made part of Art. 5, of plaintiff's bill of interpleader.

3. That plaintiff is estopped by reason of its bond and distinct obligation, hereinabove referred to in answer to the first paragraph of Art. 5, of plaintiff's bill of interpleader.

11.

That for lack of sufficient information to justify belief, this defendant denies Art. 11, of plaintiff's bill of interpleader and more especially is this so, insofar as this defendant is concerned, for the reasons stated in answer to Art. 10, of said bill of interpleader.

12.

This defendant admits the allegations of Art. 12, of plaintiff's bill of interpleader.

13.

In answer to Art. 13, of plaintiff's bill of interpleader, this defendant admits that the list of claimants therein referred to, indicates the facts alleged, but, for lack of sufficient information to justify belief, denies that they are true.

This defendant admits that there are comparatively few, if any, claims, made against plaintiff herein on said bond, and alleges that the total of the claims actually made against said bond, do not exceed the sum of $20,000.00.

This defendant further denies the allegations of the last paragraph of Art. 13, of plaintiff's bill of interpleader, but alleges that even if it were true, it discloses no reason or cause why this defendant should be impleaded herein.

Wherefore, this defendant prays that the restraining order herein issued be recalled and that the rule nisi to show cause why an injunction should not issue herein be dismissed and the injunction refused at plaintiff's cost.

And for all general and equitable relief and such further orders as the Court may deem necessary and proper in the premises.

(Sgd.) I. E. UZZO & JAMES J. LANDRY,
Attorneys for Defendant.

State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared, I. E. Uzzo, who after being duly sworn, deposes and says:

That he is one of the attorneys for the defendant hereinabove named; that he has prepared the foregoing answer; that the allegations of fact therein contained are true and correct to the best of his knowledge and belief; that the defendant Etienne Dugas, resides in the Parish of Iberia, Louisiana, is ill and unable to conveniently appear for the purpose of making this affidavit.

(Sgd.) I. E. UZZO.

Sworn to and subscribed before me, this 20th. day of June, 1931.

(Sgd.) JAMES J. LANDRY,
(Seal) Notary Public.

CLAIM OF ETIENNE DUGAS IN CONCURSUS PROCEEDINGS.

21 Filed Oct. 28, 1932.

(Title Omitted.)

To the Honorable United States District Court in and for the Eastern District of Louisiana:

Now into Court through undersigned counsel comes Etienne Dugas, the titular defendant herein and reserving all of the rights he has or may have under the exception, plea of a estoppel and answer to the peti-

tion and the remedy of interpleader, and in order to make proof of this claim, with respect shows:

1.

That, as shown by a certified copy of his petition in the matter entitled Etienne Dugas versus American Surety Company of New York and Lumberman's Reciprocal Association, bearing the number 188-642 of the docket of the Civil District Court in and for the Parish of Orleans, State of Louisiana, attached hereto and made part hereof, your claimant is entitled to participate in the distribution of the funds deposited herein; that your claimant further attaches hereto a certified copy of the judgment rendered in the proceedings herein above referred to on April 14, 1931, and signed in open Court this 20th day of April, 1931, and, make same part hereof as if reiterated in extenso, which said judgment has never been modified or changed.

2.

Now your claimant shows that the said American Surety Company of New York did, on the 27th day of April, 1931, appealed suspensively from the above alleged judgment, to the Court of Appeal for the Parish of Orleans, State of Louisiana, and did complete said appeal by filing a bond with good and solvent surety, according to law, in the sum of ten thousand dollars ($10,000), and did, on the 27th day of April, 1931, file a complete transcript of the afore referred to proceedings in the said Court of Appeal for the Parish of Orleans, and subsequently the said American Surety Company began these proceedings of interpleader and obtained an injunction restraining your claimant from further proceeding in said cause.

22 3.

Claimant now shows that he has never received any sum whatsoever on account of the compensation

or medical bills or costs under the said judgment of the Civil District Court, Parish of Orleans, and that he is up to the present time incapacitated so as to classify him as being permanently and totally disabled under the compensation law of the State of Louisiana:

4.

The claimant further shows that he has expended in the proceedings in the Civil District Court herein above referred to the sum of $225.00 dollars.

Wherefore, claimant prays, first, that his claim in the sum of twenty dollars a week commencing May 15, 1931, and such payments to continue until a total of not more than three hundred weeks have been paid, unless as to future payments this judgment be modified because of the improved condition of plaintiff's health, and all cost of the proceedings in the Civil District Court, Parish of Orleans, amounting to the sum of $225.00 dollars, plus the sum of two hundred and fifty dollars for medical bills, out of which two hundred and fifty dollars, one hundred and sixty dollars to be paid to the Charity Hospital at the City of New Orleans, be allowed and paid to your claimant out of the funds here deposited by preference and priority. Second, your claimant prays in the alternative, that should the Court find that he is not entitled to be paid in full by preference and priority, then that his claim for the above amounts be recognized and that he be permitted to participate in the distribution of the fund herein deposited in common with the other claimants.

Claimant further prays in the alternative that whether his claim be allowed as a prior of privilege claim, or only as an ordinary claim to share in the distribution of the funds herein deposited in the proportion of his

claim to the total amount of claims, that he should be given judgment for the total amount of his compensation as in case of permanent total disability, with interest at the rate of five per cent per annum on back payments which have accrued and will have accrued up to the date of the final adjudication herein and discounting the future payments at the rate of eight per cent per annum, in a lump sum, all as provided by the compensation law of the State of Louisiana and for general and equitable relief and such orders as the Court may deem necessary and proper in the premises.

(Signed) I. E. UZZO,
JAMES J. LANDRY,
Attorneys for Claimant.

23 State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared, James J. Landry, who after being duly sworn, deposes and says:

That he is one of the attorneys for the cliamant, Etienne Dugas:

That he has prepared the foregoing claim and that all of the allegations therein contained are true and correct to the best of his knowledge, information and belief.

JAMES J. LANDRY.

Sworn to and subscribed, before me this 27th day of October, 1932.

(Seal) I. E. UZZO.

24 INTERLOCUTORY INJUNCTION.

Filed June 25, 1931.

(Title Omitted.)

This cause came on to be heard on June 24, 1931, upon the application of the plaintiff for an interlocutory injunction and was argued by counsel for the respective parties and submitted, when the Court took the same under advisement;

Whereupon, after having heard the pleadings the evidence offered and arguments of counsel and upon due consideration thereof;

It Is Now Ordered, Adjudged And Decreed that an interlocutory injunction be and the same is hereby granted without the necessity of plaintiffs furnishing any security, and

It Is Ordered, Adjudged And Decreed that the defendants on whom process has been served herein, and each of them and all persons acting under their authority, and each of them, be and each of them hereby is restrained and enjoined until the further orders of this Court from suing or taking any steps to sue or doing anything towards the prosecution of any suit or proceeding in any State Court or in any other Federal Court on any claim against the American Surety Company of New York arising out of or connected with bond dated February 12, 1930, signed by the said Company as surety and the Lumbermen's Reciprocal Association as principal under and in accordance with Act 172 of the General Assembly of the State of Louisiana passed at the regular session of 1908, or any similar previous bond.

(Signed) WAYNE G. BORAH,
Judge.

New Orleans, Louisiana, June 25, 1931.

DECREE ON PETITION AND BILL OF INTERPLEADER AND WRIT OF INJUNCTION RENDERED.

25 Signed and filed Sept. 19, 1932.

(Title Omitted.)

This cause having on June 15th, 1932, been (as to the rights, duties and obligations of the plaintiff, interpleader) submitted and duly argued and taken under advisement, upon consideration thereof and for the written reasons heretofore rendered;

It is Ordered, Adjudged and Decreed:

1. That the Motion to Dismiss of Hillyer Deutsch Edwards, Inc., be and the same is hereby denied.

2. That plaintiff, American Surety Company of New York, has, by the deposit of Twenty Thousand Dollars ($20,000.00) made in this cause, complied with all of its obligations under or on account of the bond dated February 12th, 1930, executed by it as surety and by the Lumbermen's Reciprocal Association as principal, said bond being in the penal sum of Twenty Thousand Dollars ($20,000.00) and being given under Act No. 172 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1908, or under or on account of any similar previous bonds, and that said plaintiff, American Surety Company of New York, be and it is hereby released and discharged from any and all further liability on account of said bonds or any of them.

3. That all defendants hereby be and they hereby are perpetually restrained and enjoined from instituting or prosecuting in any State Court, or in any other Federal Court, any suit against said American Surety

Company of New York on account of any right or claim growing out of said bond, or any similar previous bond.

4. That there be allowed to plaintiff, American Surety Company of New York, to be paid to it, out of the sum deposited by it in the registry of this Court, the sum of One thousand, two hundred and 72/100 Dollars ($1200.72), as costs of Court herein expended by it up to the date of the hearing herein on June 15th, 1932, and all costs thereafter expended by it, and the further sum of Seven hundred and fifty dollars ($750.00) as counsel fees.

26 5. That A. Dallam O'Brien, Jr. be and he hereby is appointed as Special Master to determine the manner in which the balance of the fund remaining on deposit in the registry of this Court shall be distributed between the defendants herein.

(Signed) WAYNE G. BORAH,
Judge.

New Orleans, Louisiana, Sept. 19, 1932.

ABSTRACT OF FINDINGS FROM REPORT OF SPECIAL MASTER.

27 Filed Apr. 17, 1933.

(Title Omitted.)

To the Honorable Judge of the United States District Court for the Eastern District of Louisiana:

The Undersigned, A. Dallam O'Brien, Jr., who was appointed Master in the above entitled cause on The 19th day of September, A. D. 1932, to hear and report

to the Honorable Court his findings as to the proper manner in which the balance of the fund remaining on deposit in the registry of this Court should be distributed among the defendants herein, respectfully reports that on the 26th day of October, 1932, the 8th day of November, 1932, the 25th day of November, 1932, the 18th day of February, 1933, and again on the 11th day of March, 1933 he heard and received the evidence introduced by the parties hereto, and he respectfully submits the following report containing the findings of fact and the conclusions of law found by him, which he respectively presents as his report as Master in the above entitled cause.

Respectfully submitted,
(Sgd) A. DALLAM O'BRIEN, JR.,
Special Master.

April 17, 1933.

28 Distribution.

Etienne Dugas:

The judgment obtained by Dugas in the Civil District Court was for 300 weeks @ $20.00 per week under the terms of the Workman's Compensation Law.

May 15th, 1930 to Oct. 26th, 1932, 127 Weeks @ $20.00 per week	2540.00
173 weeks @ $8.00 per week or $1384.00 (40% disability) discounted at 8%	1273.28
Medical fees	250.00
Court costs	32.40
Expert testimony	65.00
Allowed	$4160.68

Disallowed:

173 weeks @ $12.00 per week or 60% of the claimed total disability. The evidence adduced (Tr. Nove. 8th, 1932, pp. 20-29) shows that a very slight disability, if

indeed any disability at all, at present exists, and that if such disability does so exist it is not discoverable objectively.

29 Summary of Allowances.

Etienne Dugas	4160.68
Montague Oil Co., Inc.	1420.00
Zenoria Lumber Co., Inc.	633.29
Hillyer Deutzch Edwards, Inc.	3712.48
Arkansas Natural Gas Corp.	5786.89
Mary G. Clay	3025.60
Anderson Post Hardwood Lbr. Co., Inc.	250.00
Marvin Morris	770.00
Roy O. Martin Lbr. Co., Inc.	3338.98
Grant Timber & Mfg. Co., Inc.	436.90
Harry R. Hawthorne	1985.52
Williams Bros., Inc.	17929.50
Sinclair Ref. Co. of La., Inc.	1276.48
Walter D. Landry & Will Gaskin	585.00
Grayson & Yeary Lbr. Co.	1983.44
T. J. Moss Tie Company	175.00
Farmer's Land & Canal Co., Inc.	42.36
W. E. Kolb	329.55
Weber-King Lbr. Co., Inc.	862.85
Farmer's Rice Milling Co., Inc.	43.92
Bennett Oil & Gas Co., Inc.	50.48
Weber-King Mfg. Co., Inc.	2279.05
Powell Lbr. Co., Inc.	223.33
Peavy-Wilson Lbr. Co., Inc.	6831.75
T. S. Grayson Lbr. Co.	2164.44
Total	60297.49

30 Tableau of Distribution.

Amount in the Registry of the Court		20,000.00
Costs allowed to the American Surety Co.	1,200.72	

Attorney's fees allowed American Surety Co.		750.00	
Fee of the Special Master		1,000.00	
One per cent (1%) to Clerk of Court		200.00	
Expenditures of Special Master:			
Telegrams	.79		
185 letters multigraphed	1.49		
150 Post cards multigraphed	1.13		
Stamps	15.23		
150 Post cards	1.50		
Clerical	10.00		
Stationery	15.05		
Miscellaneous	5.88	51.07	
Expenses to be reimbursed claimants		258.21	
		3,460.00	20,000.00
			3,460.00
			16,540.00

The total amount of claims allowed is $60,297.49, therefore the percentage to each claimant is 16,540.00 or .2743

60,297.49

Pro Rata Shares in Terms of Dollars & Cents:

Etienne Dugas	$ 1141.29
Montague Oil Company, Inc.	389.52
Zenoria Lumber Co., Inc.	173.72
Hillyer Deutzch Edwards, Inc.	1018.35
Arkansas Natural Gas Corp.	1587.37
Mary G. Clay	829.94
	$ 5140.19

31 Tableau of Distribution.

Carried over from preceding page	5140.19
Anderson Post Hdwd. Lbr. Co., Inc.	68.58
Marvin Morris	211.22
Roy O. Martin Lumber Co., Inc.	915.90
Grant Timber & Mfg. Co., Inc.	119.85
Harry R. Hawthorne	544.65
Williams Bros., Inc.	4918.07
Sinclair Ref. Co. of La.	350.15
Walter D. Landry & Will Gaskin	160.57
Grayson & Yeary Lbr. Co.	544.07
T. J. Moss Tie Company	48.01
Farmer's Land & Canal Co., Inc.	11.62
W. E. Kolb	90.40
Weber-King Lumber Co., Inc.	236.69
Farmer's Rice Milling Co., Inc.	12.06
Bennett Oil & Gas Co., Inc.	13.86
Weber-King Mfg. Co., Inc.	625.15
Powell Lbr. Co., Inc.	61.27
Peavy-Wilson Lbr. Co., Inc.	1873.97
T. S. Grayson Lbr. Co., Inc.	593.72
Total	$16,540.00

STIPULATION OF COUNSEL ACQUIESCING IN REPORT OF SPECIAL MASTER, AND ORDER OF COURT CONFIRMING JUDGMENT, AND THAT DISTRIBUTION OF FUNDS BE MADE, ETC.

32 Filed April 20, 1933.

(Title Omitted.)

It is hereby stipulated and agreed by the undersigned attorneys, representing all of the claimants who have

filed and or proved claims in the above entitled and numbered cause, that they acquiesce for and on behalf of their respective clients, in the report of the Special Master herein filed on the 17th day of April, 1933, and they do hereby waive the twenty (20) day's delay accorded them by Equity rule No. 66 for the filing of exceptions to the Master's report, and request the Court to confirm the report of the Special Master herein, as filed, and make it the judgment of this Court with delay, and further waive any and all legal delays.

HOWELL CARTER, JR.,
SPENCER, GIDIERE, PHELPS & DUNBAR,
MILLING, GODCHAUX, SAAL & MILLING,
WEISS, YARRUT & STICH,
WM. HERO,
A. GIFFEN LEVY,
DYMOND & LEVY,
ROSEN, KAMMER, WOLFF & FARRAR,
A. M. SUTHON,
ROBERT LAWES,
EUGIE V. PARHAM,
.....
I. E. UZZO & JAMES J. LANDRY,
Attys. for Etienne Dugas.

No objection Apr. 21, 1933.

DENEGRE, LEOVY, CHAFFE,
Attys. American Surety Co. of New York.

It Is Ordered, Adjudged And Decreed that the report of the Special Master herein, filed on the 17th day of April, 1933, is hereby confirmed and made the judgment of this Court, and that distribution of the fund

now on deposit in Court be made in accordance therewith after first deducting the costs of Court and the fee of the Special Master herein, which fee is hereby set at the sum of One Thousand Dollars.

(Signed) WAYNE G. BORAH,
Judge.

April 20, 1933.

PETITION OF ETIENNE DUGAS FILED IN CIVIL DISTRICT COURT, PARISH OF ORLEANS, IN CASE 206399.

33 Filed U. S. Dist. Court. Jan. 20, 1935.

Civil District Court, Parish of Orleans, State of Louisiana

No. 206-399 Division "D" Docket 4

Etienne Dugas,
vs.
New York Casualty Company.

..... Deputy Clerk.

Filed March 7, 1934.

To the Honorable, the Civil District Court in and for the Parish of Orleans, State of Louisiana:

The petition of Etienne Dugas of the full age of majority and a resident of New Iberia, Parish of Iberia, State of Louisiana, with respect, represents:

1.

That in the matter entitled "Etienne Dugas vs. American Surety Company of New York" bearing the

No. 188,642 of the Docket of this Court, your petitioner did, on the 14th day of April, 1931, obtain a judgment against the said American Surety Company of New York, a certified copy of which said judgment is hereto attached and made a part hereof.

2.

That on the 27th day of April, 1931, the said American Surety Company of New York appealed suspensively from the aforesaid judgment and completed said appeal by filing bond in the sum of Ten Thousand and no 100 ($10,000) Dollars with the New York Casualty Company, a corporation organized under the laws of the State of New York and duly authorized to do business in the State of Louisiana, and with a domicile and duly appointed agents in the City of New Orleans as surety thereon. And finally by filing in the Court of Appeal, Parish of Orleans, a full and complete transcript of this matter, within the time provided by law, a certified copy of which said bond is attached hereto and made part hereof.

3.

That on the 6th day of June, 1931, the principal on said appeal bond filed an interpleader in the United States District Court for the Eastern District of Louisiana, New Orleans, Division, entitled "American Surety Company of New York vs. Etienne Dugas, et als" and bearing the No. 20,782 in equity of the docket of said Court, citing more than one hundred claimants amongst whom was your petitioner herein, to make claim against the sum of Twenty Thousand ($20,000) Dollars deposited by the said American Surety Company of New York growing out of transactions with the Lumbermen's Reciprocal Association of Houston, Texas, a defunct insurance company for which the said

American Surety Company of New York was its qualifying bondsmen in the State of Louisiana;
34 that in these proceedings the said American Surety Company the principal on the bond of the defendant herein, applied for and obtained an injunction against your petitioner prohibiting him from proceeding against the said American Surety Company of New York. So that your petitioner was and is unable, without subjecting himself to contempt proceedings by the United States District Court, take any action to bring to a final determination the appeal which the said American Surety Company of New York took from the judgment of the Civil District Court herein above referred to.

4.

Petitioner charges that the bringing of the interpleader by the said American Surety Company of New York and the obtaining by them of said injunction prohibiting petitioner from proceeding further in said cause was and is an abandonment by the said American Surety Company of New York of its appeal in the said matter entitled "Etienne Dugas vs. American Surety Company of New York" and bearing the No. 13,886, of the docket of the Court of Appeal, Parish of Orleans, State of Louisiana.

5.

That as will be seen by a duly certified copy of the bond, filed by the said American Surety Company of New York and on which the defendant herein, the New York Casualty Company is the surety, the condition of said bond is that the principal shall prosecute its said suspensive appeal diligently and shall satisfy whatever judgment may be rendered against it, or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; or

otherwise that the surety shall pay the judgment finally rendered by the Court of Appeal.

6.

That the said American Surety Company of New York, principal on said bond violated the condition thereof to the extent that not only did it fail to prosecute its said suspensive appeal diligently, it on the contrary, brought proceedings as aforestated before the United States District Court prohibiting your petitioner from proceeding or in any manner attempting to force a final determination of the cause by the Court of Appeal.

7.

Petitioner further alleges, that the interpleader proceedings hereinabove referred to have been completed and is now final; that your petitioner was decreed the sum of Four Thousand One Hundred Sixty and 68/100 ($4,160.68) Dollars, of which under the said
35 judgment, he received only 27.43 per centum or the sum of One Thousand One Hundred Forty-One and 29/100 ($1,141.29) Dollars, all as will be more fully shown by reference to a certified copy of an abstract of the Master's report and the judgment thereon hereto attached and made part hereof.

8.

That your petitioner did on the 1st day of July, 1931, notify the defendant herein of the fact that said American Surety Company had taken the proceedings hereinbefore stated in the United States District Court and on the 17th day of October, 1933, your petitioner made formal demand upon the defendant herein for the sum of Three Thousand Nineteen and 39/100 ($3,019.39)

Dollars calculated in accordance with an itemized statement which is hereto attached and made part hereof, and marked Exhibit 3 for identification herewith. Which said itemized bill is a true and correct statement of petitioner's claim against the defendant in this suit.

9.

That despite said amicable demand the said defendant refuses to make settlement.

Wherefore, petitioner prays that the said defendant, through its proper officer, be duly cited to appear herein and answer hereto, and that after due proceedings had, there be judgment in favor of your petitioner, Etienne Dugas, and against the said defendant, the New York Casualty Company in the full and true sum of Three Thousand Nineteen and 39/100 ($3,019.39) Dollars together with legal interest from October 9, 1930, until paid and for all costs of this suit.

And for all general and equitable relief, and such orders as the Court may deem necessary and proper in the premises.

(Sgd.) I. E. UZZO,
Attorney for Petitioner.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared, I. E. Uzzo, who after being duly sworn, deposes and says:

That he is the attorney for petitioner in the above and foregoing petition; that he has prepared same and that all of the allegations, therein contained are true

and correct, to the best of his knowledge, information and belief.

I. E. UZZO.

Sworn to and subscribed before me, this 5 day of March, 1934.

(Sgd.) JAMES J. LANDRY,
Notary Public.

A true copy.

(Sgd.) E. ???
Deputy Clerk Civil District Court, Parish of Orleans, State of La.

AMENDED AND SUPPLEMENTAL PETITION OF ETIENNE DUGAS FILED IN CASE 206399 IN CIVIL DISTRICT COURT FOR PARISH OF ORLEANS.

36 Filed in U. S. Dist. Court Jan. 29, 1935.

Civil District Court, Parish of Orleans, State of Louisiana.

No. 206-399 Division "D" Docket 4

Etienne Dugas,
vs.
New York Casualty Company.

..... Deputy Clerk.

Filed March 14, 1934.

To the Honorable, the Civil District Court in and for the Parish of Orleans, State of Louisiana.

The amended and supplemental petition of Etienne Dugas, with leave of Court being first obtained, a resi-

dent of Iberia Parish and of the full age of majority, with respect shows:

1.

That he adopts all of the allegations of his original petition as if reiterated herein in extenso.

2.

That he desires to remit any sum due him or claimed to be due him by the defendant herein, over the sum of Two Thousand Nine Hundred Ninety-Nine and no/100 ($2,999.00) Dollars, and he does hereby, for that purpose, amend the prayer of his original petition herein to give effect to such remittance.

Therefore, petitioner prays that he may be permitted to file this supplemental and amended petition; and that the said New York Casualty Company, through its proper officer, be duly cited to appear herein and answer hereto, and that after due proceedings had, there be judgment herein in favor of petitioner, Etienne Dugas, and against said defendant, New York Casualty Company, in the sum of Two Thousand Nine Hundred Ninety-Nine and no/100 ($2,999.00) Dollars, with legal interest from date of judical demand, until paid, and for all costs of this suit.

And for all general and equitable relief, and for such further orders as the Court may deem necessary and proper in the premises.

.....,
Attorney for Petitioner.

EXCEPTION OF NEW YORK CASUALTY CO., FILED IN 206399 CIVIL DISTRICT COURT PARISH OF ORLEANS.

37 Filed in U. S. District Court Jan. 29, 1933.

Civil District Court for the Parish of Orleans, State of Louisiana.

No. 206,399 Div. "D" Docket . .

Etienne Dugas vs. New York Casualty Company.

Now into Court comes New York Casualty Company, defendant herein, for the sole purpose of excepting to plaintiff's petition and reserving the right to answer, appear or otherwise plead, in the event the said exception should be overruled, and excepts to plaintiff's petition as follows:

I.

This suit is premature in that it is a suit against a surety company and the petition affirmatively shows that the necessary steps to enforce payment, against the principal, of the balance herein claimed have not been taken as required by Article 3066 of the Civil Code and Article 596 of the Code of Practice.

II.

In the alternative, and only in the event that the foregoing exception be overruled, then and in that event said petition is entirely too vague, uncertain and indefinite to permit exceptor safely to answer thereto, in specification whereof exceptor shows:

(a) That a copy of the petition in the suit of Etienne Dugas vs. American Surety Company of New York,

referred to in Article I of the present petition, as well as a copy of each supplemental petition filed in the said cause should be, but is not, filed herein.

(b) A copy of the petition of interpleader in the matter entitled "American Surety Company of New York vs. Etienne Dugas, Et. Als.," referred to in Article III of the present petition is not, but should be filed herein.

(c) Plaintiff does not state whether, in the said interpleader suit, there was any judgment or decree fixing or limiting the liability of the American Surety Company of New York to the various claim-
38 ants against the $20,000.00 bond therein involved, which was the same bond which is the basis of the suit of Etienne Dugas vs. American Surety Company of New York, first above referred to, and plaintiff should so state; and, if there was any such judgment or decree (and there was one dated September 19, 1932), plaintiff should file herein a copy thereof.

(d) Plaintiff should state, but does not, whether he filed any answer or claim in the said interpleader proceeding, and, if he filed one (as he did) he should attach a copy thereof as well as copies of any additional or supplemental pleadings which he may have filed therein.

(e) It does not appear definitely from the petition whether plaintiff is in fact basing his claim on the judgment of the Civil District Court for the Parish of Orleans in the suit of Dugas vs. American Surety Company of New York, referred to in Article I of the petition, which judgment has never become final, or on the findings of the Special Master in the suit of American Surety Company of New York vs. Etienne Dugas, Et. Als., in the United States District Court

for the Eastern District of Louisiana, referred to in Articles III and VII of the petition.

(f) Said petition is in various and divers other respects vague and indefinite.

III.

In the alternative, and only in the event that the foregoing exceptions be overruled, then and in that event that plaintiff, having acquiesced in the judgment of the United States District Court for the Eastern District of Louisiana in the matter of "American Surety Company of New York vs. Etienne Dugas, Et. Als.", which is referred to in Article VII of plaintiff's petition and a copy of this judgment is attached to plaintiff's petition, is estopped from making any further claim on account of the qualifying bond of $20,000.00 furnished by the American Surety Company of New York, as surety, for the Lumbermen's Reciprocal Association, as principal, and is therefore estopped from making any claim against exceptor under its appeal bond as surety for American Surety Company of New York, in a suit based on said qualifying bond of the American Surety Company of New York.

39 IV.

In the alternative, and only in the event that the foregoing exceptions be overruled, then and in that event that the said petition discloses no right or cause of action against your exceptor.

Wherefore, exceptor prays that there may be judgment in its favor maintaining this exception and finally dismissing plaintiff's suit, and for costs and such other and further relief as may be necessary or proper in the premises.

DENEGRE, LEOVY & CHAFFE,
Attorneys for New York Casualty Company.

I certify that I am one of the attorneys for exceptor herein; that I have read the foregoing exception and that same is filed in good faith and not merely for purposes of delay.

40 JUDGMENT.

Etienne Dugas,
vs. No. 206,399.
New York Casualty Co.

Civil District Court Division "D". Docket 4.

On exception of prematurity.

Present: L. E. Uzzo, and Jas. J. Landry, Attorneys for Plaintiff,

Harry J. McCall, Attorney for Exceptor.

When after hearing pleadings and argument of Counsel, the Court being of the opinion that said exception was well founded, for the reasons orally assigned.

It Is Ordered By The Court, that said exception of Prematurity be maintained, and accordingly plaintiff in suit is hereby dismissed, with all rights reserved, at his costs.

Judgment rendered read and signed in open Court on April 20th, 1934.

(Sgd.) WALTER L. GLEASON,
Judge.

PETITION FOR REMOVAL OF CASE FROM CIVIL DISTRICT COURT PARISH OF ORLEANS TO U. S. DISTRICT COURT EASTERN DISTRICT OF LA.

41 Filed Jan. 29, 1935.

Civil District Court for the Parish of Orleans, State of Louisiana.

No. 206,399 Div. ". ." Docket . .

Etienne Dugas vs. New York Casualty Company.

Filed March 15, 1934.

. . . . . Dy. Clerk.

Petition for Removal.

To the Honorable, the Civil District Court for the Parish of Orleans, State of Louisiana:

Now comes New York Casualty Company, defendant herein, and files this its petition for removal of this cause from the aforesaid Civil District Court for the Parish of Orleans, State of Louisiana, in which it is now pending, to the District Court of the United States in and for the New Orleans Division of the Eastern District of Louisiana, held in the City of New Orleans in said District and State.

I.

Petitioner shows that this cause was filed in this Honorable Court on March 7, 1934 and that the time to plead, answer or except to the same has not expired under the laws of the State of Louisiana in such case made and provided.

II.

That the suit is one of a civil nature at law, over which the District Courts of the United States have original jurisdiction, the said suit having been brought by the plaintiff against the defendant by reason of the execution by defendant, petitioner herein, of a certain appeal bond, or undertaking, in a proceeding entitled "Etienne Dugas vs. American Surety Company of New York", originally No. 188,642 of the docket of this Honorable Court, and now No. 13,886 of the docket of the Court of Appeal for the Parish of Orleans, State of Louisiana, it being claimed by plaintiff that
42 by reason of the filing by American Surety Company of New York (the principal on the appeal bond executed by New York Casualty Company as surety) of a certain interpleader suit in the United States District Court for the Eastern District of Louisiana, New Orleans Division, the said American Surety Company of New York abandoned the appeal in connection with which the said appeal bond was given, and, accordingly, that plaintiff, on account of a judgment of this Court in whose favor said appeal was taken, may proceed against defendant, your present petitioner, as surety on the said appeal bond, the amount claimed in the present suit being in the principal sum of Three Thousand Nineteen and 39/100 ($3019.39) Dollars, as will appear from plaintiff's petition herein.

III.

The matter in dispute exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs, the suit being for the sum of Three Thousand Nineteen and 39/100 ($3,019.39) Dollars, as will more fully appear by plaintiff's petition on file herein, which is here referred to and made a part hereof.

IV.

At the time of the commencement of this suit, and since that time, plaintiff, Etienne Dugas, was and now is a citizen and resident of the State of Louisiana and of the Parish of Iberia in said State, and the defendant, your petitioner, was and still is a corporation chartered and existing under and by virtue of the laws of the State of New York and a citizen and resident of said state, having its office and principal place of business in the City of New York in said State, and is not, now, and was not at the time of the institution of the above suit, nor at any time, a citizen or resident of the State of Louisiana, and that there are no other parties to this suit. Defendant, your petitioner herein, files herewith a bond with good and sufficient surety for its entering in the District Court of the United States for the New Orleans Division of the Eastern District of Louisiana, within thirty (30) days from the date of the filing of this petition, a certified copy of the record in said District Court and for paying all costs that may be awarded by said Dis-
43 trict Court of the United States if said Court shall hold that such suit was wrongfully or improperly removed thereto, as provided by the statutes of the United States.

Prior to the filing of this petition and of said bond for the removal of this cause, written notice of intention to file the same was given by petitioner to the plaintiff as required by law, as will more fully appear from copy of said notice and proof of service attached thereto.

Your petitioner, therefore, prays the Court that it proceed no further herein, except to order the removal, accept the bond herewith prepared, and direct a trans-

cript of the record to be made and certified, as provided by law.

DENEGRE, LEOVY &
CHAFFE,
Attorneys for New York
Casualty Company.
HARRY McCALL,
Trial Attorney.

State of Louisiana,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared Harry McCall, who, being first duly sworn, deposes and says:

That he is a member of the law firm of Denegre, Leovy & Chaffe, attorneys for New York Casualty Company, defendant and petitioner herein; that he has read the foregoing petition, and that the facts and allegations therein contained are true and correct.

HARRY McCALL.

Sworn to and subscribed before me at New Orleans, Louisiana, this 13th day of March, 1934.

JOHN L. TOBIN,
Notary Public.

March 15/34, Denied because Supplemented Petition.

MICHEL PROVOSTY, J.

44 Civil District Court for the Parish of Orleans,
State of Louisiana.

No. 206,399 Div. ".." Docket ..

Etienne Dugas vs. New York Casualty Company.

Know All Men By These Presents That we, New York Casualty Company, as principal and Fidelity and

Deposit Company of Maryland, as surety, are held and firmly bound unto Etienne Dugas, the plaintiff in the above entitled cause, his successors and assigns in the penal sum of Five Hundred ($500.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

The conditions of this obligation are that whereas the said New York Casualty Company has applied, by petition to the Civil District Court for the Parish of Orleans, State of Louisiana, for the removal of the above entitled cause from the said Civil District Court to the District Court of the United States for the Eastern District of Louisiana, New Orleans Division;

Now if the said New York Casualty Company shall enter in the said District Court of the United States for the said Eastern District of Louisiana, New Orleans Division within Thirty (30) days from the date of filing of the petition for such removal, a certified copy of the record in said suit, and shall well and truly pay all the costs that may be awarded by said District Court, if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

NEW YORK CASUALTY COMPANY,
(As Principal)
(Sgd.) By L. P. McGEE,
(Manager).

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
(As Surety)
(Sgd.) By ARNOLD S. KIRCHOFF,
Attorney in fact.

New Orleans, Louisiana, March 13, 1934.

45 Civil District Court for the Parish of Orleans, State of Louisiana.

No. 206,399 Div. ". ." Docket . .

Etienne Dugas vs. New York Casualty Company.

To Ignatius E. Uzzo, Esquire, Attorney for Etienne Dugas, plaintiff herein:

Please take notice that New York Casualty Company, the defendant in the above entitled cause, will, on the 15th day of March, 1934, at 10:25 o'clock in the forenoon of that day, file in the Civil District Court for the Parish of Orleans, State of Louisiana, and in the Clerk's office thereof, in which said suit is now pending, its petition and bond for the removal of the said cause from the said Court to the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, and that, on the 15th day of March, 1934, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, said petition and bond will be called up for hearing and disposition before the above Court, in which this action is pending, at which time and place you may be present, if you so elect. A copy of said petition and a copy of said bond are served herewith.

New Orleans, Louisiana, March 13, 1934.

Yours very truly,
DENEGRE, LEOVY & CHAFFE,
Attorneys for defendant, New York Casualty Company, petitioner herein.

724 Whitney Building, New Orleans, La.

OPINION OF SUPREME COURT OF STATE OF LOUISIANA, IN CASE OF ETIENNE DUGAS IN CIVIL DISTRICT COURT PARISH OF ORLEANS.

46 Filed in U. S. Dist. Court Jan. 29, 1935.

Monday Jan. 7, 1935.

Supreme Court of Louisiana

Etienne Dugas,
v. No. 32,960.
New York Casualty Company.

Appeal from the Civil District Court, for the Parish of Orleans.—Walter L. Gleason, Judge.

O'NIELL, C. J.

Etienne Dugas has appealed from a judgment dismissing his suit on a plea of prematurity. In considering the appeal, we assume that the facts stated in the petition are true. Dugas had a claim for workmen's compensation insurance against the Lumbermen's Reciprocal Association, a Texas corporation doing business in Louisiana, which went into the hands of a receiver. The corporation had furnished a bond for $20,000, as required of foreign insurance companies, by Act 172 of 1908, p. 232, for the privilege of doing business in Louisiana. The American Surety Company of New York was surety on the $20,000 bond. Dugas, therefore, sued the American Surety Company, in the Civil District Court in New Orleans, and obtained a judgment against the company for $20 per week during his disability, not to exceed 300 weeks, commencing on the 15th of May, 1930, and for $250 for medical bills. In the same judgment the American Surety Company obtained a judgment against the Lumber-

men's Reciprocal Association and its receiver for reimbursement of the same amount and to the same extent that Dugas obtained judgment against
47 the American Surety Company. The judgment was signed on the 20th of April, 1931. The American Surety Company promptly took a suspensive appeal from the judgment, to the Court of Appeal for the Parish of Orleans, and filed an appeal bond for $10,000, signed by the New York Casualty Company as surety. The record was filed promptly in the Court of appeal, and thereafter, on the 6th of June, 1931, the American Surety Company of New York filed in the United States District Court for the Eastern District of Louisiana an interpleader suit, entitled American Surety Company of New York v. Etienne Dugas et al., and deposited $20,000, and cited Dugas and many other defendants having claims against the American Surety Company of New York, by virtue of the qualifying bond of $20,000 which the Company had signed as surety for the Lumbermen's Reciprocal Association. The American Surety Company asked for and obtained from the United States District Court a decree declaring that the company had discharged in full its obligation under the qualifying bond of $20,000, and enjoining Dugas and the other defendants from taking any further proceedings against the American Surety Company under the bond of $20,000. In the judgment of the United States District Court affirming the report of the special Master, in the interpleader suit, Dugas was allowed $20 per week for 127 weeks, that is, from the 15th of May, 1930, to the date of the first hearing before the master, and was allowed $8 per week (for 40 per cent disability) for the remaining 173 weeks being $1,273.28 (discounted at 8%), plus the $250 for medical fees, and $97.50 Court costs, making a total allowance of $4,160.68. In the distribution of the $20,000 deposited by the American Surety Company, among the defendants in the interpleader suit in the United States Dis-

trict Court, Dugas received, as his pro rata share, $1,-141.29, leaving unpaid $3,019.39 of the indebtedness which was fixed and recognized by the decree affirming the master's report. Thereafter, Dugas made demand for the $3,019.39 upon the New York Casualty Company, as surety on the appeal bond of $10,000, which was given by the American Surety
49 Company to appeal from the judgment of the Civil District Court to the Court of Appeal for the Parish of Orleans. The New York Casualty Company denied liability, and Dugas brought this suit against the company for the $3,019.39. To avoid a removal of the suit to the United States District Court, Dugas filed a supplemental petition reducing his demand to $2,999.

The New York Casualty Company, the only defendant in the present suit, filed, alternatively, but in one document, first, the plea of prematurity, second, an exception of vagueness, third, a plea of estoppel by acquiescence on the part of Dugas in the decree of the United States District Court, and, fourth, an exception of no cause or right of action. The judge sustained the plea of prematurity, without passing upon the other pleas.

The plea of prematurity is founded upon the provisions of article 3066 of the Civil Code and article 596 of the Code of Practice, to the effect that no suit shall be instituted against a surety on an appeal bond until the necessary proceedings have been taken against the principal to compel payment of the judgment. It is conceded by counsel for the New York Casualty Company that the reason why Dugas does not proceed further to enforce against the American Surety Company the judgment which he obtained against the company in the Civil District Court is that he cannot proceed further with the prosecution of the suit in which the judgment was rendered, without violating the injunc-

tion which was granted by the United States District Court. And, as the injunction has been made perpetual by the decree of the United States District Court, it is conceded that, if the plea of prematurity is well founded, so also is the exception of no right of action well founded. In other words, if Dugas is not permitted to sue the New York Casualty Company as surety on the $10,000 appeal bond until he has prosecuted further his suit against the American Surety Company, in the Court of Appeal for the Parish of Orleans, he will never be permitted to sue
49 the New York Casualty Company as surety on the $10,000 appeal bond.

The conditions of the appeal bond on which this suit is founded are precisely in accord with the terms prescribed in article 579 of the Code of Practice, viz: "That it is given as surety that the appellant shall prosecute his appeal, and that he shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in his appeal, otherwise that the surety shall be liable in his place". The first obligation on the part of an appellant, in order to save the surety from liability on the appeal bond, is "that the appellant shall prosecute his appeal". If he prosecutes his appeal, he must also "satisfy whatever judgment may be rendered against him, * * * otherwise the surety shall be liable in his place". But the appellant may render the surety liable as well by abandoning his appeal, as by prosecuting the appeal and then failing to satisfy whatever judgment may be rendered against him. It was so decided in Champonier v. Washington, 2 La. Ann. 1013. In that case the appeal was declared abandoned by the failure of the appellant to file the transcript before the expiration of the return day. See Champonier v. Washington, 2 La. Ann. 722. The plaintiff then proceeded against the surety on the appeal bond, and he pleaded that the

plaintiff had no right to proceed against him "because the judgment against Washington, from which the appeal was taken, was not affirmed by this [the Supreme] Court". The Court held that, as the appellant had not prosecuted his appeal, but had abandoned it, the obligation for which the surety was liable on the appeal bond was to pay the judgment appealed from. In so deciding the Court said:

"Where an appellant abandons his appeal, the surety on the appeal bond cannot exempt himself from responsibility on the ground that 'the judgment
50 appealed from has not been affirmed', as contemplated by sec. 20 of the stat. of 20 March, 1839, and arts. 575, 596, of the Code of Practice. Per curiam: The condition of the appeal bond, following literally the requisition of art. 579 of the Code of Practice, was 'that the appellant shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him', &c. The appellant did not prosecute his appeal, and the condition of the bond was thus broken."

That decision was cited with approval in Moore, Janny & Hyams v. Lalaurie, 27 La. Ann. 1013, and in Rowle v. Feltus, 33 La. Ann. 422, and in Russ & Hollingsworth v. Their Creditors, 45 La. Ann. 422, 12 So. 627; in which cases it was held that an appeal bond which did not contain the obligation or condition that the appellant should prosecute his appeal was not a valid appeal bond. To the same effect see the editorial note to Woodle v. Settlemeyer, L. R. A. 1915 A, p. 845, III, and Ann. Cas. 1916 C, p. 1228.

The American Surety Company in this instance, abandoned the appeal which the company had taken from the judgment of the Civil District Court to the Court of Appeal for the Parish of Orleans, when the

Company went into the United States District Court and enjoined Dugas from prosecuting his suit, then pending in the Court of Appeal. It is argued by counsel for the New York Casualty Company that the American Surety Company did not abandon its appeal, but, on the contrary, satisfied the judgment appealed from, by depositing in the United States District Court the amount of the $20,000 bond on which the suit was founded. That would be true, perhaps, if the judgment which Dugas had obtained against the American Surety Company had been limited in its terms so that he could collect only a proportionate share of the amount of the $20,000 bond on which the suit was brought. But the judgment which Dugas held against the American Surety Company was unqualified in that respect, and was exigible against any property belonging to the company. The judgment was a final judgment, not subject to annulment or amendment except by the Court having appellate jurisdiction. Code of Prac. Art. 539,565. And the execution or collection of the judgment was prevented only by the suspensive appeal, and on the condition that the appellant, American Surety Company, should prosecute the appeal, and should satisfy whatever judgment might have been rendered against the company, or that the surety on the appeal bond, the New York Casualty Company, should be liable in its place The expression in the article of the code, "that the surety shall be liable in his place", means that the surety shall be liable for whatever judgment the principal on the bond shall be liable for; that is, the judgment of the appellate Court if the appellant prosecutes his appeal, or the judgment appealed from if the appellant abandons the appeal. Any other interpretation would render a suspensive appeal bond worthless in the case of an abandonment of an appeal from a money judgment. And any other interpretation would contradict the very language of the bond, "that the appellant shall prosecute his appeal".

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It is impossible to reconcile, in principle, the judgment appealed from in this case with the rulings which were made in American Surety Company of New York v. Brim et al., 175 La. 959, 144 So. 727, and American Surety Company of New York v. Brim et al., In re: Lyon Lumber Co., etc., 176 La. 867, 147 So. 18. In the first of these cases Mrs. Brim, and in the second the Lyon Lumber Company, had a claim against the Home Accident Insurance Company, for workmen's compensation insurance; and the company, being a foregin corporation, became insolvent and went into the hands of a receiver. Mrs. Brim and the Lyon Lumber Company, each, obtained a judgment against the American Surety Company of New York, as surety on the qualifying bond of the Home Accident Insurance Company; and in each case the American Surety Company took a suspensive appeal to this Court; and in each case the judgment appealed from was affirmed. After the judgment of this Court in Mrs. Brim's case had become final by the refusal of a rehearing, but before the judgment in the Lyon Lumber Company's case had become final by the lapse of the time allowed for an application for a rehearing, the American Surety Company filed an interpleader suit in the Civil District Court, under the provisions of Act 123 of 1922, against Mrs. Brim and the Lyon Lumber Company and all others having claims against the Home Accident Insurance Company; and, depositing the amount of the qualifying bond into the registry of the Court, the

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American Surety Company obtained an injunction against all of the defendants in the interpleader suit, forbidding them to proceed further against the American Surety Company as surety on the Home Accident Insurance Company's qualifying bond. In the Lyon Lumber Company's case, as well as in Mrs. Brim's case, we held that it was too late for the American Surety Company to restrict the right of recovery by way of an injunction in an interpleader suit. In deciding the Lyon Lumber Company's case we said:

"The only difference between Bertha Brim's case and the Lyon Lumber Co. Case, which we are now considering, is that, at the time plaintiff made its deposit in the Court below, Mrs. Brim's judgment had become final in this Court; whereas, at the time the deposit was made, the Lyon Lumber Company judgment had not yet become final, but only became so afterwards.

"That, however, made no difference. There had been a judgment against the American Surety Company in the Court below, though the *execution* of that judgment had been suspended by an appeal. But the condition on which the law allowed the American Surety Company to suspend that judgment was that it should pay the judgment if affirmed on appeal, and furnish a good and solvent surety who would do so in its stead.

"As an appeal is not necessary to due process of law, a state may annex any condition it pleases to the granting of an appeal; and manifestly, if the law requires [that] a surety be furnished to guarantee the payment of the judgment if affirmed, it is not intended as a mere idle formality. Therefore the proceedings in the Court below should not and could not prevent the Lyon Lumber Company from proceeding to fix the liability of the surety to enable it to collect from that surety if for any reason the American Surety Company could not be made to pay."

The only difference between the Lyon Lumber Company's case and Dugas' case is that in the
53 Lyon Lumber Company's case, the Court that granted the injunction in the interpleader suit was one over which this Court had appellate and supervisory jurisdiction; whereas, in Dugas' case, the Court that granted the injunction in the interpleader suit is one over which this Court has no jurisdiction. Because of that difference between the two cases, it is said by counsel for the New York Casualty Company that the

decree of the United States District Court, forever enjoining Dugas from proceeding further against the American Surety Company for the collection of his judgment, must be obeyed. That is true; but the decree is only in favor of the American Surety Company, not in favor of the New York Casualty Company. The United States District Court did not, in its decree, undertake to destroy or limit Dugas' right of action against the New York Casualty Company, as surety on the appeal bond which was given to suspend the execution and to secure the payment of the judgment rendered by the District Court for the Parish of Orleans, from which an appeal was taken to the Court of Appeal for the Parish of Orleans. We must bear in mind that this suit is not founded upon the qualifying bond for $20,000, which the American Surety Company signed as surety for the Lumbermen's Reciprocal Association, but is founded upon the suspensive appeal bond for $10,000, which the New York Casualty Company signed as surety for the American Surety Company. The $20,000 qualifying bond passed out of the case when the American Surety Company abandoned its appeal in the suit on that bond and thereby rendered the New York Casualty Company liable as surety on the $10,000 appeal bond.

Counsel for the New York Casualty Company cite, in support of the judgment appealed from, certain expressions used by this Court in deciding the Lyon Lumber Company's case, viz:

"The effect of this [interpleader] proceeding and
of the injunction issued therein by the Court
54 below was that neither Bertha Brim not the
Lyon Lumber Company could collect their judgements either from the American Surety Company or from the surety on the appeal bonds. For, if the sheriff could make no attempt to collect from the principal on the appeal bond because he was enjoined from

doing so, it followed that the surety on the bond could never be made to pay (Code Prac. arts. 579, 596); and the appeal bond would thus become a mere scrap of paper."

That was said in condemnation of the interpleader proceeding and to show the injustice of it as far as Mrs. Brim and the Lyon Lumber Company were concerned. The Court did not have any occasion to decide in that case and did not decide what effect the interpleader proceeding would have upon the liability of the surety on the appeal bonds, if the interpleader proceedings should be allowed to proceed to a final judgment against Mrs. Brim and the Lyon Lumber Company and in favor of the principal on the appeal bonds.

It is argued by counsel for the New York Casualty Company that, if Dugas is allowed to proceed against the company as surety on the $10,000 appeal bond, the effect will be the same as to allow Dugas to proceed against the American Surety Company as principal on the bond, because, if the New York Casualty Company is held liable as surety on the appeal bond, the company will have recourse against the American Surety Company as principal on the bond. Whether the New York Casualty Company will be barred, in that event from proceeding against the American Surety Company, by the injunction that was granted by the United States District Court in the interpleader suit, is a question with which Dugas is not concerned. He did not institute the interpleader suit. It is true that, if the New York Casualty Company has to pay Dugas and if the American Surety Company has to reimburse the New York Casualty Company, the American Surety Company will have paid out more than the amount of the $20,000 qualifying bond. But that happened in
Mrs. Brim's case and in the Lyon Lumber
55 Company's case, as a consequence of the failure of the American Surety Company to pro-

voke an interpleader suit until the plaintiff in each of those cases had obtained a final judgment against the American Surety Company; and by the same token it may happen in this case.

Decree.

The judgment appealed from is annulled, the plea of prematurity is overruled, and the case is ordered remanded to the Civil District Court for further proceedings consistent with the opinion which we have rendered. The costs of this proceeding, on the plea of prematurity, are to be borne by the appellee; the question of liability for other Court costs is to abide the final disposition of the case.

Rehearing refused Febry. 4, 1935.

A true copy:

Clerk's Office, New Orleans, May 21st, 1935.
(Seal) PERCY J. HEINES,
Deputy Clerk Supreme Court
of Louisiana.

APPLICATION OF N. Y. CASUALTY CO. FOR REHEARING.

56 Filed in Supreme Court of Louisiana in case No. 32,960.

Etienne Dugas;
v. No. 32,960.
New York Casualty Company.

Supreme Court of Louisiana.

The petition of New York Casualty Company, defendant and appellee, respectfully shows:

That the opinion and decree rendered in this cause on the 7th. day of January, 1935, is erroneous and

contrary to the law and the evidence and prejudicial to the interest of petitioner, and that a rehearing should be granted in this matter for the following reasons, to-wit:

(1) The Court is in error in its statement as to what the facts were, or what was held, in the case of *Champomier v. Washington 2 La. An. 1013*, which is the foundation of the entire opinion.

(2) The Court is in error in holding that a suit will lie against a surety on an appeal bond unless and until the steps provided by *Article 3066* of the *Civil Code and Article 596 of the Code of Practice* are taken.

(3) The Court is in error in holding that a surety on an appeal bond can be made liable on the said bond when there is no claim against the principal on such bond.

(4) The Court is in error in holding that in view of the decree of the Federal Court fully discharging the principal on the said appeal bond from any further liability to plaintiff, any action can be brought against the surety on the said bond.

(5) The Court is in error in holding that the liability of a surety on an appeal bond can be greater than that of the principal.

Petitioner further shows that it will file, in connection with this petition, briefs in support thereof, and that for the reasons hereinabove set forth and
57 amplified in the briefs, a rehearing should be granted, and, finally, judgment of the District Court should be affirmed.

The premises considered, petitioner prays that, after due consideration, a rehearing be granted in this case,

and that finally, the judgment of the District Court be affirmed, and for all general and equitable relief.

(Signed) DENEGRE, LEOVY & CHAFFE,
Attorneys for New York Casualty Company.

(Signed) HARRY McCALL,
Trial Attorney.

New Orleans, January 19, 1935.

PETITION OF AMERICAN SURETY COMPANY OF N. Y., AND ORDER FOR DEFENDANT TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE.

58 Filed Jan. 29, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

The supplemental petition of American Surety Company of New York, plaintiff herein, respectfully shows:

I.

As to Etienne Dugas, one of the defendants herein, it was alleged in Article V of the original petition herein:

"There are two suits pending against petitioner under its said bond of February 12, 1930. One of these suits is entitled Etienne Dugas vs. American Surety Company of New York, No. 188,642 of the Docket of the Civil District Court for the Parish of Orleans,

State of Louisiana, and in it a judgment was on April 14th, 1931, entered in favor of the plaintiff therein against the defendant therein (the plaintiff herein) requiring the payment of $20.00 a week for a period not to exceed three hundred weeks, as will more fully appear from copy of the said judgment hereto attached as part hereof and marked, Surety 2. The said judgment being duly signed the defendant, your plaintiff, obtained an order of appeal to the Court of Appeal for the Parish of Orleans, in which Court the matter is not set down for argument on June 9, 1931."

II.

In the answer herein filed by the said Dugas this allegation was specifically admitted.

III.

By decree herein entered on September 19, 1932, plaintiff was adjudged to have complied with all of its obligations under or on account of the bond dated February 12, 1930, executed by it as surety and by the Lumbermen's Reciprocal Association as principal, said bond being in the penal sum of Twenty Thousand Dollars ($20,000.00) and being given under Act 172 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1908, or on account of any similar previous bonds, and plaintiff was released and discharged from any and all further liability on account of said bonds or any of them and the said decree further provided:

59 "That all defendants hereby be and they hereby are perpetually restrained and enjoined from instituting or prosecuting in any state Court, or in any other Federal Court, any suit against said American Surety Company of New York on account

of any right or claim growing out of said bond, or any similar previous bond."

IV.

After the entry of the decree of September 19, 1932, the Special Master appointed by the said decree held hearings and filed a report on April 17, 1933, in which he proposed that the sum of One Thousand One Hundred Forty-one and 29/100 Dollars ($1,141.29) be paid to the said Dugas as his pro rata share in the amount deposited in Court by plaintiff.

V.

Under stipulation entered into by and between all of the defendants, through their respective counsel, including Dugas, acquiescing in the said report of the Special Master and waiving the delay for the filing of exceptions thereto, this Court, on April 20, 1933, confirmed the said report and ordered distribution made in accordance therewith.

VI.

There was promptly paid to the said Dugas the pro rata share allowed him by the said report.

VII.

In the said suit brought by Dugas against the plaintiff herein, (American Surety Company of New York No. 188,642 of the docket of the Civil District Court for the Parish of Orleans), the situation still is as set forth in Article V of the original petition herein, to-wit, that a judgment had been entered by the said Civil District Court on April 14, 1931, in favor of the plaintiff therein and against the defendant therein, requiring

the payment of Twenty Dollars ($20.00) a week for a period not to exceed three hundred (300) weeks, from which judgment an appeal was taken to the Court of Appeal for the Parish of Orleans, where the transcript had been lodged prior to the filing of the interpleader suit herein.

VIII.

On March 7, 1934, the said Etienne Dugas filed in the Civil District Court for the Parish of Orleans under the number 206,399 of the docket of the said Court, a suit against the New York Casualty Company, in the sum of Three Thousand Nineteen and
60 39/100 Dollars ($3,019.39) as will more fully appear from the petition in the said suit, copy of which is hereto attached as part hereof, marked "Surety A".

IX.

On March 14, 1934, the said Dugas filed an amended and supplemental petition reducing the amount claimed by him in the said suit to Two Thousand Nine Hundred Ninety-nine Dollars ($2,999.00) as will more fully appear from copy of the said supplemental and amended petition hereto attached as part hereof, marked "Surety B".

X.

The purpose of the reduction of the claim embodied in the said supplemental and amended petition was to avoid a removal of the suit to this Court.

XI.

New York Casualty Company, the defendant in the said suit, promptly filed exceptions to plaintiff's petition, copy of the said exceptions being attached hereto as part hereof, marked "Surety C".

XII.

Said exceptions were heard before the Civil District Court for the Parish of Orleans, which, on April 20, 1934, maintained the exception of prematurity first urged and dismissed plaintiff's suit reserving the rights under the other exceptions, which were urged in the alternative.

XIII.

Thereupon, the said Dugas appealed to the Supreme Court of the State of Louisiana where the cause was heard in due course and that Court, on January 7, 1935, annulled the judgment appealed from, overruled the plea of prematurity and remanded the case for further proceedings consistent with the opinion handed down by the said Court in said case. A copy of the opinion and decree of the said Supreme Court is attached hereto as part hereof, marked "Surety D".

XIV.

New York Casualty Company, the defendant in the said cause, has applied to the Supreme Court of Louisiana for a rehearing, which application has not yet been acted on by that Court.

61.

XV.

As will appear from the documents hereto attached and from the record of this Court in this case, the bond of the New York Casualty Company, on which suit was brought in the Civil District Court for the Parish of Orleans against the said New York Casualty Company, was an appeal bond executed by the American Surety Company of New York as principal and the New York Casualty Company as surety in connec-

tion with the appeal taken by the American Surety Company from the judgment against it and in favor of Etienne Dugas, referred to in Article V of the original petition herein, and the said judgment was based solely and entirely on the Twenty Thousand Dollar ($20,000.00) bond dated February 12, 1930, executed by American Surety Company of New York as surety and by the Lumbermen's Reciprocal Association as principal, specifically described in the decree of this Court dated September 19, 1932, hereinabove mentioned.

XVI.

Suit of the said Dugas against the New York Casualty Company is therefore an attempt to collect under the judgment obtained by Dugas against American Surety Company of New York in the Civil District Court for the Parish of Orleans, as to which said judgment said American Surety Company was, by the decree of this Court of September 19, 1932 in the present cause, released and discharged from any and all further liability.

XVII.

Furthermore, in view of the said decree of September 19, 1932, perpetually restraining and enjoining all defendants, including the said Dugas, from instituting or prosecuting in any State Court, or in any other Federal Court, any suit against said American Surety Company of New York on account of any right or claim growing out of the Twenty Thousand Dollar ($20,000.00) bond referred to, or any similar previous bond, it is apparent that the suit in the State Court against the New York Casualty Company is an attempt indirectly to do the very thing forbidden by the said decree of this Court, for if Dugas should succeed in collecting from the New York Casualty Company,

the American Surety Company of New York would have to reimburse the New York Casualty Company as the surety on its appeal bond for any amount
62 paid out by New York Casualty Company to the said Dugas, or expended by the New York Casualty Company in the way of fees or expenses in connection with the said suit.

XVIII.

American Surety Company of New York has no adequate remedy at law and is therefore entitled to the injunctive protection of this Court against the said Dugas in aid of the former decree of this Court against the said Dugas.

XIX.

Unless Dugas is restrained and enjoined from proceeding with his suit against the New York Casualty Company, plaintiff herein will be seriously and irreparably injured.

XX.

Maurice J. Hartson, a resident of this Parish and State, was and is Civil Sheriff of the Parish of Orleans, State of Louisiana, and as such is the official charged with the duty of executing the decrees and orders of the Civil District Court for the said Parish, and for that reason plaintiff desires that he be made a party hereto in order fully to guarantee the effectiveness of the relief herein sought.

Wherefore, as plaintiff is without adequate remedy at law for its protection in this matter, plaintiff respectfully prays:

(1) That it may have leave to file this supplemental petition.

(2) That proper process issue and be served upon Etienne Dugas, the defendant hereinabove named, and upon Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, requiring said defendant and said Civil Sheriff to appear and answer this supplemental petition within the time allowed by law, but not under oath, answer under oath being expressly waived.

(3) That an order to show cause issue herein directed to the said Etienne Dugas and to the said Civil Sheriff requiring said Etienne Dugas to appear and show cause why a preliminary injunction should not issue as herein prayed for, enjoining and restraining said Dugas, his attorneys, agents and representatives, from taking any steps to institute, prosecute or execute any judgment in, any suit or proceeding (and in particular the proceeding entitled Etienne Dugas v. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal, in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas v. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and requiring said Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana to appear and show cause why a preliminary injunction should not issue against him, enjoining and restraining him, his successors in office, agents, servants, employees

63

and representatives from executing or taking any action to execute any judgment, decree, or order which may be issued against New York Casualty Company in suit of Etienne Dugas against said New York Casualty Company, which is hereinabove mentioned. That notice of this application for a preliminary injunction issue and be served upon the said Dugas, both individually and through his counsel, and upon Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana, giving said defendant and said Civil Sheriff not less than .... days' notice of the hearing to be had.

(4) That upon final hearing of this cause, the said preliminary injunction may be made permanent, enjoining and restraining said Etienne Dugas, defendant herein, his attorneys, agents, servants, employees and representatives and any and all other persons or parties acting under his suggestion, direction, control or authority from taking any steps to institute, prosecute or execute any judgment in, any suit or proceeding (and in particular the proceeding entitled Etienne Dugas v. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal, in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas v. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana, his successors in office, agents, servants, employees and representatives

and any and all other persons or parties acting under his suggestion, direction, control or authority from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas against said New York Casualty Company, which is hereinabove mentioned.

(5) That upon final hearing of this cause said Etienne Dugas be ordered and directed to dismiss his suit against American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, and to take any and all proper action to evidence the said dismissal by the filing of appropriate motion in the Court of Appeal for the Parish of Orleans and/or in the Civil District Court for the Parish of Orleans and/or of satisfying the docket in the said cause; and, at the same time, releasing and relinquishing any claim or pretended claim against the appeal bond filed in the said cause by the New York Casualty Company as surety, all as this Court may direct, and

(6) For all costs of this proceeding and for such other and further relief as may be equitable and proper in the premises.

(Sig.) DENEGRE, LEOVY & CHAFFE,
Attorneys for American Surety Company of New York.

(Sig.) HARRY McCALL,
Trial Attorney.

64 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared Harry McCall, who, being first duly sworn, deposes and says:

That he is one of the attorneys for American Surety Company of New York, petitioner herein; that he has

read the foregoing petition and the facts and allegations therein contained are true and correct.

Affiant further deposes and says that, as a member of the law firm of Denegre, Leovy & Chaffe, he personally handled the original proceedings herein on behalf of American Surety Company of New York, petitioner herein; and that, on behalf of New York Casualty Company, he handled and is handling the suit brought by Etienne Dugas in the Civil District Court for the Parish of Orleans, described in Article VIII and in subsequent articles of the petition herein; and that he is personally and entirely familiar with all of the phases of the litigation referred to in the previous petition.

(Sig.) HARRY McCALL.

Sworn to and subscribed before me at New Orleans, Louisiana, this 29 day of January, 1935.

(Sig.) C. D. SHAW,
Deputy Clerk U. S. District Court, Eastern District of Louisiana

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ORDER.

Considering the foregoing petition and the affidavit thereto,

It is Ordered that the said petition may be filed as prayed for and according to law.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, Louisiana, January 29, 1935.

EXCEPTION OF ETIENNE DUGAS TO JURISDICTION.

65 Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Now into Court comes Etienne Dugas, made defendant herein, and appearing first solely for the purpose of excepting to this Court's jurisdiction with respect, shows:

I.

That this Court is without jurisdiction ratione materiae and ratione persona.

II.

That all of the matters, things and conditions raised by the plaintiff herein in its original petition referred to in Article 1 of its so-called supplemental petition which is the subject of these exceptions were finally and definitely adjudicated by a decree of this Court of September 19th, 1932, as is also shown by Article 3 of plaintiff's alleged supplemental petition, and which decree became final on the ..... day of ....., 19..., which was the end of the term of this Court, and was not therefore subject to change, modification or alteration by this Honorable Court and could not be so changed, altered or modified, except on appeal; that at the end of said term there was not then pending any motion or procedure whatsoever undetermined which could be construed as delaying the finality of

the decree herein rendered and entered on September 19th, 1932; and, in that this Honorable Court has not now the power or authority to so change the decree by extending or broadening the effect of the injunction heretofore rendered herein so as to protect a third person, not made a party quoad respondent in said original proceedings.

III.

Respondent further shows that this alleged supplemental petition is not an attempt to aid or maintain this Honorable Court's original jurisdiction for the reason that there is no charge that the injunction heretofore rendered herein has been violated, but on the contrary, said alleged supplemental petition conclusively shows that it is an attempt to enjoin respondent from proceeding against a third person, on a separate and distinct solemn contract based on the statutory Law of the State of Louisiana, the scope and effect of which as to said third person has been fully and completely adjudicated by the Supreme Court of the State of Louisiana, the Court of final jurisdiction of said State, and after the said cause had been determined contradictorily with said third person through all of the Courts of said State, and has been determined unfavorably to said third party, in whose interest the alleged supplemental petition is herein filed.

66

IV.

Respondent further shows that this Honorable Court lacks jurisdiction to try and determine this matter for the further reason that the amount involved is less than $3,000.00; that the Supreme Court of the State of Louisiana did, on the fourth day of February, 1935, refuse a rehearing in the matter entitled "Etienne Dugas vs. New York Casualty Company," wherein

the judgment complained of and said alleged supplemental petition, was rendered; that said judgment is final and is reviewable, if at all, by the Supreme Court of the United States exclusively on writs of certiorari.

Wherefore, petitioner prays that this plea to the jurisdiction of the Court be maintained and that plaintiff's petition be dismissed at its cost and for all general and equitable relief consistent with this plea.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Attorneys for Respondent.

67 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who after being duly sworn, deposes and says that he is one of the attorneys for the respondent herein; that the respondent is at this time in another part of the State of Louisiana and unable to return to the jurisdiction of this Court; that affiant is thoroughly familiar with all of the facts and circumstances of this case which are alleged in the above and foregoing pleading, and that they are, to his knowledge, true and correct; that the above and foregoing plea is, in his opinion, well founded in Law and not filed solely for the purpose of delay.

(Signed) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Signed) SIDNEY T. DAVILLA,
(Seal).

BILL OF EXCEPTION TO RULING OF COURT OVERRULING EXCEPTION TO JURISDICTION.

68 Filed Feb. 25, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the exception to the jurisdiction of this Court, the Court having heard the pleadings, the law and the argument, and having over-ruled the same, respondent Etienne Dugas, reserves this bill of exceptions and makes part hereof, plaintiff's supplemental petition and all of the documents thereto attached and made part thereof and respondent's plea to the jurisdiction of the Court together with all the documents attached to and made part thereof, and the evidence heard upon trial of the rule, all of which consists of the following:

1. Decree of District Court for the Eastern District of Louisiana, New Orleans Division, in the matter entitled, "American Surety Company of New York vs. Etienne Dugas, et als.," No. 20,782, dated September 19th 1932.

2. It is admitted by all parties that the term of Court in which the above decree was rendered and signed, expired November 21st, 1932.

3. Copy of petition and exceptions filed and judgment maintaining exceptions of prematurity, and of record in the matter entitled "Etienne Dugas vs. New York Casualty Company," No. 206-399 of the Docket of the Civil District Court, Parish of Orleans, State of Louisiana.

4. Certified copy of opinion and decree of the Supreme Court of the State of Louisiana, dated January 7th, 1935, and certificate of the Clerk of said Court, thereto attached, showing that a rehearing was refused in said matter on February 4th, 1935.

5. Certified copy of application for rehearing of the New York Casualty Company, in the matter entitled, "Etienne Dugas vs. New York Casualty Company," No. 32,960, of the Docket of the Supreme Court of the State of Louisiana.

6. Extract of report of Special Master, in the matter entitled "American Surety Company of New York vs. Etienne Dugas, et als.," No. 20,782, of the Equity Docket of the United States District Court for the Eastern District of Louisiana, New Orleans Division.

7. Copy of advertisemnt published in the Time-Picayune Paper of the City of New Orleans, State of Louisiana on the 19th day of April, 1932, in the last above named matter and published also in said newspaper on March 15th, 22nd, 29th, 1932, and April 5th and 12th, 1932.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah Judge of said Court for his signature and such reasons as he may desire to assign.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., February 25, 1935.

This has been submitted to us; no objection thereto.

DENEGRE, LEOVY & CHAFFE,
Attys. for American Surety Co. of N. Y.

I. E. UZZO,
JAMES J. LANDRY,
Attys. for Etienne Dugas.

N. O. Feby. 23/35.

PLEA OF EXCEPTION OF ETIENNE DUGAS TO RIGHT OR PROPRIETY OF ISSUING WRIT OF INJUNCTION, ETC.

69 Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Now into Court comes Etienne Dugas and files this plea to the power and authority of this Honorable Court to issue the injunction prayed for in plaintiff's supplemental petition, returnable this day, which plea the defendant files in the alternative, and only in the event that his plea to the jurisdiction of the Court be over-ruled, and for the purpose stated, with respect, shows:

I.

That this Honorable Court is without power or authority to stay proceedings in any State Court except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy (R. S. 720; Mar. 3, 1911, c. 231, 265, 36 Stat. 1162) or under the Interpleader Act (Section 41, Title 26, U. S. C. A.) or, as more fully stated in Essanay Film Manufacturing Co. vs. Kane, 42 Supreme Court Reporter, Page 319, in the following words, to-wit:

"That appellant's objection to the action sought to be restrained rests upon a fundamental ground and one based upon a provision of the Constitution of the United States, does not render the effort to stay proceedings in the State Court any the less inconsistent with section 265, Judicial Code. That section would be of little force, did it not apply to cases where, save

for its prohibition, good ground would exist for enjoining the prosecution of a pending suit. And, as to the federal question involved, Congress at all times, commencing with the first Judiciary Act (September 24, 1789; 1 Stat. 73, 85, c. 20 25), has maintained upon the statute book such provisions as it deemed needful for reviewing judicial proceedings in the State Courts involving a denial of federal rights, but has confined them to a direct review by this Court, and deferred this until final judgment or decree in the State Court of last resort. At the same time, since 1793, the prohibition of the use of injunction from a Federal Court to stay proceedings in a State Court has been maintained continuously, and has been consistently upheld. Hull v. Burr, 234 U. S. 712, 723, 34 Sup. Ct. 892, 58 L. Ed. 1557, and cases cited. In exceptional instances the letter has been departed from while the spirit of the prohibition has been observed; for example, in cases holding that, in order to maintain the jurisdiction of a Federal Court properly invoked, and render its judgments and decrees effectual, proceedings in a State Court which would defeat or impair such jurisdiction may be enjoined. French Trustee v. Hay, 22 Wall. 250, 22 b. Ed. 857; Dietzsch v. Huidekoper, 103 U. S. 494, 497, 26 L. Ed. 497; Julian v. Central Trust Co. 193 U. S. 93, 112, 24 Sup. Ct. 399, 48 L. Ed. 629; Traction Co. v. Mining Co., 196 U. S. 239, 245, 25 Sup. Ct. 251, 49 L. Ed. 462; Looney v. Eastern Texas R. Co., 247 U. S. 214, 221, 38 Sup. Ct. 460, 62 L. Ed. 1084. The effect of this, as will be observed, is but to enforce the same freedom from interference on the one hand, that it is the prime object of section 265 to require on the other."

and as also fully set out in Russell vs. Detrick, 23 Federal Reporter (2d) 177, the following words, to-wit:

"The question remains whether the injunction was forbidden by section 265 of the Judicial Code (28

USCA 379), which prohibits the issuance of a writ of injunction by any Court of the United States to stay proceedings in any Court of a State, except in bankruptcy cases. The appellees contend that the present case is not governed by that section for the reason that the injunction runs not against the State Court, but against the plaintiffs in the actions in that Court. But violation of the section is not thus avoided. Essanay Film Company v. Kane, 258 U. S. 358, 42 S. Ct. 318, 66 L. Ed. 658; Peck v. Jenness, 7 How. 612, 625, 12 L. Ed. 841. It is true that the prohibition of injunction is not universal in its scope. It does not forbid a Federal Court to enjoin attempts to impair its own jurisdiction by proceedings in a State Court (French v. Hay, 22 Wall. 250, note, 22 L. Ed. 857), or to issue injunction where there is an entire lack of jurisdiction in the State Court (Simon v. Southern Railway Company, 236 U. S. 115, 35 S. Ct. 255, 59 L. Ed. 492), or to enjoin the enforcement of a judgment subject to attack as having been obtained through fraud (Marshall v. Holmes, 141 U. S. 589, 12 S. Ct. 62, 35 L. Ed. 870), or a judgment, the enforcement of which would be contrary to recognized principles of equity and the standards of good conscience (Wells Fargo & Co. v. Taylor, 254 U. S. 175, 183, 41 S. Ct. 93, 65 L. Ed. 205); or to enforce an unconscionable judgment fraudulently obtained (Ex Parte Simon, 208 U. S. 144, 29 S. Ct. 238, 52 L. Ed. 429)."

"But the present case does not belong in the class of any of the recognized exceptions. It is an injunction against the plaintiffs in a State Court, enjoining them against taking further steps in the prosecution of suits to cancel securities, and it is issued on behalf of plaintiffs in a Federal Court, not parties to the suits in the State Court, to defeat cancellation of the securities and protect their own interest therein. We think the injunction comes clearly within the prohibition of Section 265. Essanay Film Company v. Kane, supra.

"The argument that, if the suits in the State Court are permitted to be prosecuted to judgment before the suit in the Federal Court can be adjudicated, the latter adjudication will be made futile, is answered in Kline v. Burke Const. Co., 260 U. S. 226, 233, 43 S. Ct. 79, 67 L. Ed. 226, 24 A. L. R. 1077, where it is pointed out that the jurisdiction of a Federal Court, having been conferred by act of Congress, may be taken away in whole or in part by a later act of Congress such as the prohibition of injunction expressed in Section 265. But that section does not deprive a District Court of jurisdiction otherwise conferred by the federal statutes. It merely goes to the question of equity in the particular case presented, leaving the Court to determine whether the case is one in which injunctive relief is prohibited. Woodmen of the World v. O'Nell, 266 U. S. 292, 298, 45 S. Ct. 49, 69 L. Ed. 293; Smith v. Apple, 264, U. S. 274, 277, 44 S. Ct. 311, 68 L. Ed. 678."

71 Wherefore, respondent prays that the injunctive relief prayed for by the petitioner be denied and that since such relief is the main object of the present petition, its present suit be dismissed simultaneously with the denial of such relief and such further orders and decrees as may be consistent with the plea herein made.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Attorneys for Respondent.

72 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who after being duly sworn, deposes and says that he is one of the attorneys for the respondent herein; that the respondent is at this time in another part of the State of Louisiana

and unable to return to the jurisdiction of this Court; that affiant is thoroughly familiar with all of the facts and circumstances of this case which are alleged in the above and foregoing pleading and that they are, to his knowledge, true and correct; that the above and foregoing plea is, in his opinion, well founded in Law and not filed solely for the purpose of delay.

(Signed) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Signed) SIDNEY T. DAVILLA.

(Seal).

BILL OF EXCEPTION TO RULING OF COURT OVERRULING PLEA TO PROPRIETY OF ISSUING WRIT OF INJUNCTION.

Filed Nov. 15, 1935, nunc pro tunc as of Feb. 25, 35.

73 (Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the exception to the right of this Court to grant injunctive relief, the Court having heard the pleadings, the law and the argument, and having over-ruled the same, respondent Etienne Dugas, reserves this bill of exceptions and makes part thereof, respondent's plea to the right and power of this Honorable Court, to grant injunctive relief herein, and all the pleadings, documentary and other evidence made part of this bill heretofore reserved herein, to the ruling of this Honorable Court, denying respondent's plea to the jurisdiction of this Court.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah, Judge of said Court for his signature, and such reasons as he may desire to assign.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., Nov. 15, 1935, as of February 25, 1935.

EXCEPTION OF ETIENNE DUGAS OF NO RIGHT OR CAUSE OF ACTION.

74 Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

And now comes into Court, by way of second alternative plea, and in the event only that the pleas heretofore made are over-ruled Etienne Dugas, who respectfully shows:

I.

That petitioner, in the alleged supplemental petition, is without right to bring this action for the reason that said petition discloses that it is an attempt to obtain relief in favor of a third party not made a party to this action, neither as plaintiff nor defendant; further, that the plaintiff herein named is neither a proper party, a necessary party, nor an indispensable party.

II.

Respondent shows that the alleged supplemental petition herein discloses no cause of action.

III.

Respondent further shows that the said petition discloses no cause of action for the reasons set out fully in the decision of the Supreme Court of the State of Louisiana in the matter entitled Etienne Dugas vs. New York Casualty Company, which is now final, a certified copy of which is hereto attached and made part hereof;

Further, that if as a result of said judgment, the American Casualty Company is obligated to reimburse the New York Casualty Company any sum whatsoever, such obligation is the result of its having executed the suspensive appeal bond in the matter of Etienne Dugas vs. American Surety Company, and was a new and different undertaking and contract solemnly entered into under and by authority of State statute in a proceeding conducted in a State Court.

Further, if for any reason it might be said or argued that the New York Casualty Company would have a right to proceed against the American Surety Company of New York for any judgment that Etienne Dugas might obtain against the New York Casualty Company in the proceeding complained of, and that such right would be in violation of the injunction heretofore granted in favor of the American Surety Company alone, or in violation or contravention of the decree of this Honorable Court, relieving the said American Casualty Company from any further liability under its $20,000.00 bond, which respondent denies, then plaintiff's cause is based on an anticipated wrong that might or might not be committed by the New York Casualty Company, with which it is not alleged to even have been threatened.

75

Wherefore, respondent prays that these exceptions be maintained and that plaintiff's petition be dis-

missed at his cost and for such other relief as will be consistent herewith.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Attorneys for Respondent.

76 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who after being duly sworn, deposes and says that he is one of the attorneys for the respondent herein; that the respondent is at this time in another part of the State of Louisiana and unable to return to the jurisdiction of this Court; that affiant is thoroughly familiar with all of the facts and circumstances of this case which are alleged in the above and foregoing pleading, and that they are, to his knowledge, true and correct; that the above and foregoing plea is, in his opinion, well founded in Law and not filed solely for the purpose of delay.

(Signed) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Sgd.) SIDNEY T. DAVILLA.

(Seal).

BILL OF EXCEPTIONS TO RULING OF COURT OVERRULING EXCEPTIONS OF NO CAUSE OF ACTION.

Filed Nov. 15, 1935, nunc pro tunc as of Feb. 25, 1935.

77 (Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the exception of no right or cause of action, the Court having heard

the pleadings, the law and the argument, and having over-ruled the same, respondent Etienne Dugas, reserves this bill of exceptions and makes part hereof, respondent's exceptions of no right and no cause of action, together with all documents, pleadings and agreements attached and made part of respondent's bill reserved to the ruling of this Honorable Court, denying respondent's plea to the jurisdiction of this Court.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah, Judge of said Court for his signature.

(Sgd.) WAYNE G. BORAH, Judge.

New Orleans, La., Nov. 15, 1935, as of Feb. 25, 1935.

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78 ANSWER TO THE MERITS.

Filed Feb. 6, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Now into Court comes Etienne Dugas, made defendant herein, reserving all of his rights under exceptions and pleas heretofore filed in the event same are over-ruled and especially pleads the same here in the alternative as filed, as if reiterated in full, for answer to plaintiff's petition, respectfully shows:

I.

Respondent admits the allegations of Article 1 of plaintiff's petition.

II.

Respondent admits the allegations of Article 2 of plaintiff's petition.

III.

Respondent admits the allegations of Article 3 of plaintiff's petition.

IV.

Respondent admits the allegations of Article 4 of plaintiff's petition.

V.

Respondent admits the allegations of Article 5 of plaintiff's petition.

VI.

Respondent admits the allegations of Article 6 of plaintiff's petition.

VII.

Respondent admits the allegations of Article 7 of plaintiff's petition, but alleges that judgment of the Civil District Court referred to herein was,
79 as is shown, and fully described in the final decree of the Supreme Court of the State of Louisiana in the matter entitled Etienne Dugas vs. New York Casualty Company, was contingent upon the progress of the improvement of the health of the said Dugas; the special master appointed in this matter revised the judgment of the Civil District Court according to the statute law of the State of Louisiana relative to compensation cases, as is fully

shown by the report of the master on file in this record, and which is made part hereof by reference as if fully copied in extenso, and which was confirmed and made the final decree of this Court.

VIII.

Respondent admits the allegations of Article 8 of plaintiff's petition.

IX.

Respondent admits the allegations of Article 9 of plaintiff's petition.

X.

Respondent admits the allegations of Article 10 of plaintiff's petition, but especially alleges that the reason set forth was not the only reason for reducing the amount. Respondent shows that the cost of litigation in the State Court in the event of an adverse ruling by the trial Court is cheaper than in the Federal Courts. Furthermore, respondent believed and was affirmed in that belief by the final judgment of the Supreme Court of the State of Louisiana that the contract sued upon in the matter referred to was a judicial bond, having for its existence and consideration purely and wholly the statutory law of the state of Louisiana and that, therefore, the ruling of the State's highest tribunal, irrespective of how it might have been eventually determined, would have been the greatest authority as to the effect and scope thereof. Furthermore, petitioner herein was not a party to that suit.

XI.

Respondent admits the allegations of Article 11 of plaintiff's petition.

XII.

Respondent admits the allegations of Article 12 of plaintiff's petition and especially alleges that it was on the insistence of the New York Casualty
80 Company, defendant and appellee, in the matter complained of, who insisted upon arguing the substantive rights and effect of the contract over and above the question of prematurity of action, because, they said, one could not be discussed without the other, and in support of these allegations, respondent attaches hereto and makes part hereof, a copy of his original brief filed in said cause in the said Supreme Court of the State of Louisiana, together with a copy of the original brief filed in the Supreme Court in said matter by the New York Casualty Company.

Respondent further attaches hereto and makes part hereof, copy of the supplemental brief filed by your respondent, on the insistence of the said Supreme Court, as a result of the contention of the said New York Casualty Company that the pleas of prematurity and of right or cause of action, could not be separated.

XIII.

Respondent admits the allegations of Article 13 of plaintiff's petition.

XIV.

Respondent admits the allegations of Article 14 of plaintiff's petition and especially alleges that on the 4th day of February, 1935, the application for rehearing herein referred to was refused by the Supreme Court of the State of Louisiana and for the purpose of showing that the said Supreme Court of the State of Louisiana gave to the said New York Casualty Company full consideration on every point of substansive

and adjective right which could legally be raised in the proceedings as carried on and conducted by the litigants therein involved, respondent attaches hereto and makes part hereof, a certified copy of the application for rehearing and a copy of the brief of the New York Casualty Company, in support of said application filed in the said Supreme Court of the State of Louisiana. Respondent also attaches hereto a certified copy of the order of Court refusing said rehearing.

XV.

Respondent admits the allegations of Article 15 of plaintiff's petition.

81

XVI.

Respondent denies the allegations of Article 16 of plaintiff's petition.

XVII.

Respondent denies the allegations of Article 17 of plaintiff's petition and specifically alleges that the conclusions therein drawn are glaringly erroneous as is best evidenced by reference to the decision of the Supreme Court of the State of Louisiana, a copy of which is attached hereto and made part of plaintiff's petition.

XVIII.

Respondent denies the allegations of Article 18 of plaintiff's petition, and especially alleges that it is not entitled to any relief since it is not an interested party in the suit of Etienne Dugas vs. the New York Casualty Company, and since the Courts of Equity will grant no relief against the effect of a contract which

is not charged to have been entered into collusively or in error or fraud or on account of violence.

XIX.

Respondent denies the allegations of Article 19 of plaintiff's petition.

XX.

Respondent denies the right of the plaintiff to enjoin the executing officer of State Court in the circumstances of this case; denies the jurisdiction of this Court to issue and entertain such an injunction in a case of this kind.

XXI.

Respondent denies each and every allegation not hereinabove especially admitted.

Wherefore, respondent prays that the rule nisi herein issued be dismissed and that the injunctive relief prayed for he denied and finally, that there be judgment in favor of respondent and against the petitioner, dismissing his suit at cost and for all general and equitable relief, and such orders and decrees as the Court may deem necessary and proper in the premises.

(Sgd.) I. E. UZZO,
(Sgd.) JAMES J. LANDRY,
Attorneys for Respondent.

82 State of Louisiana,
Parish of Orleans.

Before Me, the undersigned authority, personally came and appeared I. E. Uzzo, who, after being duly sworn, deposes and says that he is one of the attorneys for the Respondent herein, and that he has aided in the preparation of the foregoing pleadings; that he knows all of the allegations therein contained to be true and correct, and that the said respondent is absent

from the city; that affiant is more familiar with all of the circumstances of this case than the respondent.

(Sgd.) I. E. UZZO.

Sworn to and subscribed before me this 6th day of February, 1935.

(Sgd.) SIDNEY T. DAVILLA.

(Seal).

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83 PRELIMINARY INJUNCTION.

Filed Feb. 13, 1935.

(Title Omitted.)

Preliminary Injunction on Supplemental Petition.

This cause came on to be heard at this term on supplemental petition of plaintiff, American Surety Company of New York, in aid of and to effectuate as against Etienne Dugas, one of the defendants herein, the previous decree herein of September 19, 1932, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to-wit:

That, upon the filing by plaintiff, American Surety Company of New York, of a bond in the sum of One Thousand Dollars ($1,000.00) with good and sufficient surety, and its approval by the Court, a preliminary injunction issue enjoining and restraining Etienne Dugas, his attorneys, agents and representatives from taking any steps to institute, prosecute or execute any judgment in any suit or proceeding (and in particular in proceeding entitled Etienne Dugas v. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court on any claim growing out of or connected with the appeal bond executed by New York Casualty Com-

pany as surety and American Surety Company of New York as principal in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas v. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, his successors in office, agents, servants, employees and representatives from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas v. New York Casualty Company, which is hereinabove mentioned.

This preliminary injunction shall remain in full force and effect pending the determination of this cause on the merits, and pending any further action by the Court.

(Sgd.) WAYNE G. BORAH,
United States District Judge.

New Orleans, La., February 13, 1935.

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84 BILL OF EXCEPTIONS.

Filed Nov. 15, 1935, nunc pro tunc as of Feb. 25 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

Be It Known that on the trial of the rule nisi herein, to show cause why a preliminary injunction should not be granted as prayed for by petitioner herein, the Court after hearing the pleadings, evidence, law and

argument of counsel, granted to petitioner the relief prayed for, and respondent reserved this bill of exceptions to the judgment and ruling of the Court, and he makes part of this bill, all of the evidence considered at the trial hereof, which consists of the documents, papers, agreements and other evidence made part of the bill of exceptions reserved to the overruling of the Court of respondent's plea to the jurisdiction of this Honorable Court.

This bill was submitted to all the parties to this litigation for their signatures and to the Honorable Wayne G. Borah, Judge of said Court for his signature and such reasons as he may desire to assign.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., Nov. 15th, 1935, as of February 25, 1935.

STIPULATION OF COUNSEL THAT MATTER BE SUBMITTED ON SAME PLEADINGS SUBJECT TO ALL BILLS OF EXCEPTION AND ON SAME EVIDENCE AS APPLICATION FOR PRELIMINARY INJUNCTION.

85 Filed Feb. 25, 1935.

(Title Omitted.)

Agreement of Counsel to submit for Final Hearing the Case presented by the Supplemental Petition of American Surety Company of New York, Plaintiff herein, on the same Evidence as was introduced on the Application of the said Plaintiff for a Preliminary Injunction under the said Supplemental Petition.

It is stipulated and agreed by and between Denegre, Leovy & Chaffe, attorneys for American Surety Company of New York, plaintiff herein, I. E. Uzzo and James J. Landry, attorneys for Etienne Dugas, de-

fendant herein, and Frank W. Hart, attorney for Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana, that this case be and it hereby is submitted for final trial on the supplemental petition of the said plaintiff, upon the same pleadings filed by respondents and subject to all the bills of exceptions reserved by him, and upon the same evidence as was had and produced before the Court at the hearing upon the application for a preliminary injunction applied for in the said Supplemental petition and hereinbefore allowed, and that the matter is herewith submitted to the Court for final decision without further argument.

(Sgd.) DENEGRE, LEOVY & CHAFFE,
Attorneys for American Surety Company of New York, Plaintiff.
I. E. UZZO,
JAMES J. LANDRY,
Attorneys for Etienne Dugas, Defendant.
FRANK WM. HART,
Attorney for Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, State of Louisiana.

New Orleans, Louisiana, February 25, 1935.

PERMANENT INJUNCTION.

86 Filed Feb. 25, 1935.

(Title Omitted.)

This cause came on to be heard at this term on final hearing on supplemental petition of plaintiff, American Surety Company of New York, in aid of and to

effectuate as against Etienne Dugas, one of the defendants herein, the previous decree herein of September 19, 1932, and was submitted by counsel and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, to-wit:

That an injunction issue herein permanently enjoining and restraining Etienne Dugas, his attorneys, agents and representatives from taking any steps to institute, prosecute or execute any judgment in any suit or proceeding (and in particular in proceeding entitled Etienne Dugas vs. New York Casualty Company, No. 206,389 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas vs. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and permanently enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, his successors in office, agents, servants, employees and representatives from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas against New York Casualty Company, which is hereinabove mentioned.

87 It is further ordered, adjudged and decreed that costs in this supplemental proceeding shall be taxed against Etienne Dugas, one of the defendants herein, and that preliminary injunction bond

heretofore filed by American Surety Company of New York on February 13, 1935, be and it hereby is canceled and the surety thereon released.

(Signed) WAYNE G. BORAH,
United States District Judge.

New Orleans, Louisiana, February 25th, 1935.

Approved as to form only.
I. F. UZZO,
JAMES J. LANDRY,
Of Counsel for Dugas.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

88 Filed Mar. 4, 1935.

(Title Omitted.)

Findings of Fact.

I.

I find as facts the allegations of fact contained in Articles I to XV, inclusive of the supplemental petition herein, all of which said allegations are admitted in the answer herein filed by Etienne Dugas, defendant; and I find that Maurice J. Hartson, a resident of the Parish of Orleans, State of Louisiana, was and is the Civil Sheriff of the Parish of Orleans, State of Louisiana, and as such is the official charged with the duty of executing the decrees and orders of the Civil District Court for the said Parish.

II.

I find as a fact that, as stated in Article XIV of the answer of Etienne Dreas, the Supreme Court of Louisiana, on February 4, 1935, denied the application of New York Casualty Company for a rehearing, described in Article XIV of the supplemental petition herein.

Conclusions of Law

I conclude that this Court has jurisdiction of the subject matter presented by the supplemental petition herein, which I regard as a supplemental bill in aid of and to effectuate the original decree of this Court in this matter, dated September 19, 1932. Rose v. Wadsworth, 150 U. S. 401; Wilson v. Alexander, 276 Fed. 875 (C. C. A. 8); Local Loan Co. v. Hunt, 292 U. S. 234.

That the term of Court at which the original decree herein had expired is immaterial. As stated by the Court of Appeals for the Eighth Circuit, in McCutchen v. Union Trust Co., 271 Fed. 586, at page 593:

"The fact that the terms of Court at which the foreclosure decree and the order for the receivers' sale were entered had expired is not important. The decision of the State Courts, giving to the order an effect not contemplated when it was made, and involving also the foreclosure decree according to Hardin's contention, occurred subsequently. It was proper to bring the subsequent situation so created to the attention of the Court below by supplemental bill."

A similar situation existed and a like result was reached by the Court of Appeal for this Circuit in Wilson v. Alexander, 276 Fed. 875, 879-880.

As to the contention that the Court has not juris-
diction of the present supplemental bill because the
relief therein invoked is in favor of the New York
Casualty Company, which was not a party to the
original proceeding herein my conclusion is that since
the original decree herein of September 19, 1932, re-
leased the American Surety Company of New York,
plaintiff herein, from any and all further liability on
account of its statutory bond of February 12, 1930, and
enjoined the defendants, including Duran, from insti-
tuting or prosecuting in any State Court any suit against
or against the American Surety Company of New York on ac-
count of any right or claim growing out of said bond,
and since the original petition specifically described,
in Article V thereof, suit of the said Duran against
the American Surety Company of New York, plain-
tiff herein, in the Civil District Court for the Parish
of Orleans, No. 188,642 of the docket of that Court,
and since it was on account of bond given by the said
American Surety Company of New York as principal
and the New York Casualty Company as surety, in
connection with an appeal from a judgment in favor
of Duran and against the said American Surety Com-
pany of New York in that suit, that Duran is now
attempting to hold the New York Casualty Com-
pany as surety on the bond of the American Surety
Company of New York, it is obvious that under the law
of Louisiana the said New York Casualty Company,
as surety on the appeal bond, would, in the event of
payment by it of any judgment obtained by Duran,
be legally subrogated to the rights of the said Duran
and could and would look to the American Surety
Company of New York for reimbursement and, there-
fore, the attempt to collect from the surety on the
said appeal bond is an indirect method of pro-
90 ceeding against the principal on the said bond,
American Surety Company of New York,
which it was the intention and purpose of the order
and decree herein of September 19, 1932, to forbid.

This view is supported by the recent decision of the Supreme Court in Local Loan Co. v. Hunt, 292 U. S. 234. It is further supported by the clear purposes of the Federal Interpleader Act (May 8, 1926, c. 273, paragraphs 1-3, 44 Stat. 416, United States Code Annotated Title 28, Section 41, sub-section 26), which vests the Federal Courts with jurisdiction of an interpleader suit such as was originally herein brought and authorizes it to hear and determine the cause and to discharge the complainant from further liability and to issue an injunction enjoining all defendants from instituting or prosecuting any suit or proceeding in any State Court or in any other Federal Court on account of such bond.

Nor does it matter that the amount involved in the suit of Dugas against the New York Casualty Company in the State Court is less than Three Thousand Dollars ($3,000.00), because this is a supplemental bill; and, in such case, the United States Court is protecting its previously acquired jurisdiction, which has resulted in a decree giving rights which are attacked by subsequent proceedings brought in a State Court. Wilson v. Alexander, supra, page 879. See also Local Loan Co. v. Hunt, supra, in which it was paid at page 239:

"The proceeding being ancillary and dependent, the jurisdiction of the Court follows that of the original cause, and may be maintained without regard to the citizenship of the parties or the amount involved, * * *"

As to the proposition that this Court is without power or authority to stay proceedings in any State Court, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy or under the interpleader act, this is a supplemental bill in a proceeding under the interpleader act

and the mere question of the power of the Court to restrain the execution of a judgment from which an appeal had been taken and an appeal bond given, was closed by the decree of September 19, 1932, from which no appeal was taken and which has long since become final. That question was definitely raised by Dugas in the original proceedings and the conclu-
91 sions reached were adverse to his contentions and that matter cannot now be reopened. While I am inclined to believe that the action of Dugas, in attempting to collect from the New York Casualty Company on a suit in the State Court, was forbidden by the original decree of September 19, 1932, it is clearly desirable to remedy any possible doubt on the literal interpretation of the original decree herein, and to follow out the spirit of that decree by granting the injunctive relief now sought specifically restraining Dugas from taking any action against the New York Casualty Company on account of its execution, as surety, of the appeal bond which is the basis of the present suit in the State Court.

(Signed) WAYNE G. BORAH,
U. S. Dist. Judge.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

92 Filed May 23, 1935.

(Title Omitted.)

To the Honorable Wayne G. Borah, Judge, of the United States District Court, for the Eastern District of Louisiana, New Orleans Division:

The above named defendant, Etienne Dugas, feeling herself aggrieved by the final decree entered on the 25 day of February, A. D. 1935, does hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the

assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decrees were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

I. E. UZZO,
JAMES J. LANDRY,
Solicitors for Defendant,
Etienne Dugas.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of $250.00 Dollars.

(Signed) WAYNE G. BORAH, Judge.

New Orleans, La., May 23rd, A. D. 1935.

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93 ASSIGNMENT OF ERRORS.

Filed May 23, 1935.

(Title Omitted.)

To the Honorable, the United States District Court for the Eastern District of Louisiana, New Orleans Division:

And now, on the 23rd day of May, 1935, came the defendant, Etienne Dugas, by his solicitors, Ignatius Edward Uzzo and James J. Landry and says the decree entered on the 25th day of February, 1935, in the above cause is erroneous and unjust to defendant.

First. Because this Honorable Court erred in overruling defendant's exception to the jurisdiction of the

Court, ratione materiae and ratione persona, in, that the bill brought, is to restrain a suit, between defendant and a third party not a party to this suit and not a party to any previous suit in any Federal Court, and not based on any contract or obligation over which any Federal Court had had jurisdiction or in connection with which any decree had been rendered by any such Court; it does not involve any Federal question, is not a bill to restrain or regulate, revive, modify or correct any previous decree of any Court of the United States of America, and there is no fund or property in the custody of any such Court to be protected or awaiting final disposition thereof, and said bill cannot be classed as an auxiliary suit giving the United States District Court for the Eastern District of Louisiana ancillary jurisdiction, but is an original bill and lacks the minimum jurisdictional amount fixed by law for such purpose.

Second. Because, even if this Honorable Court had the jurisdiction to pass upon the matters presented in plaintiff's bill, it erred in granting the injunctive relief prayed for, because this action is to enjoin further proceedings in a suit that had been prosecuted through the State Courts of final jurisdiction, litigated between defendant and a third party not a party to this suit or any previous suit in any Federal Court on a contract executed under a State Statute, in the course of legal proceedings in a State Court, and in which proceeding the plaintiff in the present cause was not and could not be made a party, and the present suit is not in connection with any bankruptcy; nor is it an interpleader proceeding.

Third. Because, the learned Trial Court erred in overruling defendant's exceptions of no right and of no cause of action, in that:

(a) The relief sought by plaintiff is to relieve a third party from the effect of a judgment ob-

94 tained in the Court of final jurisdiction in this State (Louisiana), in a litigation which involved no Federal question and in which plaintiff was and is not a party directly or indirectly, involves less than the minimum jurisdictional amount required to give Federal Courts jurisdiction, and plaintiff does not appear in a representative capacity, nor claims to have authority from such third person to obtain the relief sought in its behalf.

(b) Plaintiff's bill does not allege that it has been called upon nor even that it will be called upon to reimburse the third party against whom defendant has proceeded in the State Court in the event that defendant obtains a money judgment against said third person finally. But in the event that such would be the case, if as a matter of fact and law, the contract, which is the basis of the suit now sought to be enjoined, could be construed as forming part of and being incidental to plaintiff's qualifying bond which was the basis of the original bill of interpleader, then plaintiff has a perfect defense to any claim that may be made against it as a result thereof by reason of the discharge gained by it in the decree of the District Court on its said bill of interpleader. If, however, as defendant contends is the true situation, the contract forming the basis of the suit pending in the State Court is a new, separate, different and distinct contract, then such contract is the law between the parties thereto and in the absence of collusion, fraud or violence, or of error of fact or law, the Courts of Equity can give no relief against the effects thereof. The learned Judge of the District Court further erred in not following the decision of the Supreme Court of Louisiana in the matter sought to be enjoined, in as much as said decision determines the obligation and effect of a contract entered into, in the course of a legal proceeding and under and by virtue of a state statute for such cases specifically enacted, and it is not charged

that such statute violates any Federal Statute or the Federal Constitution or the Constitution of Louisiana.

Fourth. The learned Judge of the District Court erred, for the reasons set forth above, in granting the preliminary injunction prayed for by plaintiff herein.

Fifth. The learned Judge of the District Court erred, for the reasons set forth above, in granting the final injunction prayed for by the plaintiff herein.

95 Wherefore, the defendant prays that said decree be reversed and the Circuit Court of Appeals directed to maintain the exceptions to the jurisdiction of the United States District Court for the Eastern District of Louisiana, New Orleans Division; or of any other Federal Court; that in the alternative, the issuance of preliminary and permanent injunctions herein, be decreed improper, and that the ruling of the learned Trial Judge, over-ruling defendant's exception to the right or propriety of granting injunctive relief be reversed; that the ruling of the Trial Judge, overruling defendant's exceptions of no cause and of no right of action be reversed, and finally that the writ of injunction herein issued be recalled, rescinded and avoided and that there be judgment herein in favor of defendant and against plaintiff, dismissing its suit.

(Sgd.) I. E. UZZO,
(Sgd.) JAMES J. LANDRY,
Solicitors for Defendant,
Etienne Dugas.

New Orleans, May 22, 1935.

Service accepted, and citation waived, with reservation of all rights.

(Sgd.) DENEGRE, LEOVY & CHAFFE,
Attorneys for American Surety Co. of N. Y.

96 APPEAL BOND.

Filed May 24, 1935.

Know all Men by these Presents, that we, Etienne Dugas, as principal, and Globe Indemnity Company, as surety, are held and firmly bound unto H. J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana, New Orleans Division, in the full and just sum of Two Hundred Fifty dollars to be paid to the said H. J. Carter, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 23 day of May, in the year of our Lord one thousand nine hundred and thirty-three.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between Etienne Dugas and the American Surety Company of N. Y., No. 20,782, a judgment was rendered against the said Etienne Dugas, and the said Etienne Dugas having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said American Surety Company, citing and admonishing it to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Etienne Dugas shall prosecute to effect, and answer all damages and costs if he fail to make

his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ETIENNE DUGAS,
By I. E. UZZO, Atty.
(Signed) GLOBE INDEMNITY COMPANY, (Seal)
G. B. HARRISON, JR.,
(Seal) Resident V. Pres.

Sealed and delivered in presence of—
.....
.....

Approved by—
(Signed) WAYNE G. BORAH, Judge.

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97 PRAECIPE.

Filed May 23, 1935.

(Title Omitted.)

It is stipulated by and between undersigned counsel representing all parties at interest herein, that the record of appeal in this matter shall be made up of the following:

1. Petition and bill of Interpleader and affidavit filed June 6th, 1931.

2. Temporary restraining order, June 5th, 1931.

3. Order to show cause, dated June 5th, 1931.

4. Judgment Civil District Court, in matter entitled "Etienne Dugas vs. American Surety Co.," No. 188-642 of Docket of said Court.

5. Suspensive Appeal Bond in above matter.

6. Qualifying Bond of Lumberman's Reciprocal Association, with American Surety Co. of New York, as surety.

7. Exception of no right or cause of action filed by Etienne Dugas June 23, 1931.

8. Plea of Estoppel filed by Etienne Dugas June 23, 1931.

9. Answer of Etienne Dugas filed June 23, 1931.

10. Claim of Etienne Dugas in Concursus Proceedings.

10½. Interlocutory Injunction dated June 25, 1931.

11. Decree on the petition and Bill of Interpleader and writ of Injunction, rendered and signed September 19, 1932.

12. Abstract of findings of Special Master.

13. Stipulation and decree of District Court, based on Special Master's Report, signed April 20, 1933.

14. Copy of petition and exceptions filed and judgment maintaining exceptions of prematurity, and of record in the matter entitled, "Etienne Dugas vs. New York Casualty Co.," No. 206,399 of the Docket of the Civil District Court, Parish of Orleans, State of Louisiana.

15. Petition for removal to United States District Court and notice thereof.

98 16. Certified copy of opinion and decree of the Supreme Court of the State of Louisiana, dated January 7, 1935, and a certificate of the Clerk of said Court, thereto attached, showing that a rehearing was refused in said matter on February 4, 1935.

17. Certified copy of application for rehearing of the New York Casualty Company, in the matter entitled "Etienne Dugas vs. New York Casualty Co.," No. 32,960 of the Docket of the Supreme Court of the State of Louisiana.

18. Petition for Injunction in present suit filed January 29, 1935.

19. Plea or exception to jurisdiction of Court, filed by Etienne Dugas February 6, 1935.

20. Bill of Exceptions reserved to ruling of the Court overruling exception to jurisdiction filed February 25, 1935.

21. Plea or exception to the right or propriety of issuing writ of injunction as prayed for by plaintiff, filed by Etienne Dugas February 6, 1935.

22. Bill reserved to the ruling of the Court overruling the plea on exception to the right or propriety of issuing writ of injunction filed by Etienne Dugas February 25, 1935.

23. Exception of no right and no cause of action filed by Etienne Dugas February 6, 1935.

24. Bill reserved to the ruling of the Court overruling the exceptions of no right and no cause of action filed by Etienne Dugas February 25, 1935.

25. Answer to the merits filed by Etienne Dugas February 6, 1935.

26. Preliminary injunction dated February 25, 1935.

27. Bill reserved to the judgment of the Court, granting plaintiff injunctive relief prayed for dated February 25, 1935.

28. Stipulation of counsel dated March 4, 1935, to the effect that the matter be submitted on the same pleadings subject to all bills of exceptions reserved and upon the same evidence as was had and tried before the Court at the hearing upon application for a preliminary injunction.

29. Permanent Injunction, dated February 25, 1935.

30. Findings of fact and conclusions of law.

31. Assignment of Errors.

99 32. Motion or petition of appeal.

33. Bond of Appeal.

34. This Stipulation.

(Signed) I. E. UZZO,
(Signed) JAMES J. LANDRY,
Solicitors for Defendant,
Etienne Dugas.
(Signed) DENEGRE, LEOVY & CHAFFE,
Solicitors for American Surety Company of New York.

100 Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 99 pages contain and form a full, true and complete transcript of the record, assignment of errors and all proceedings in the cause entitled "American Surety Company of New York vs. Etienne Dugas, et als.," No. 20,782 In Equity of the Docket of this Court as made up in accordance with praecipe for transcript copied therein.

Witness My Hand and the seal of the said Court at the City of New Orleans, Louisiana, this 15th day of November, A. D. 1935.

H. J. CARTER, Clerk,
By H. W. NIEHUES,
(Seal) Deputy Clerk, U. S. District Court, Eastern District of Louisiana.

[fol. 118] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 27th, 1936

No. 7961

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK

On this day this cause was called, and, after argument by James J. Landry, Esq., for appellant, and Harry McCall, Esq., for appellee, was submitted to the Court.

[fol. 119] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed April 9, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7961

ETIENNE DUGAS, Appellant,

versus

AMERICAN SURETY COMPANY OF NEW YORK, Appellee

Appeal from the District Court of the United States for the Eastern District of Louisiana

(April 9, 1936)

Before Foster, Sibley and Walker, Circuit Judges

WALKER, Circuit Judge:

On February 12, 1930, the appellee, American Surety Company of New York, executed as surety a bond in the sum of $20,000.00, Lumberman's Reciprocal Association, a

Texas corporation, being the principal in that bond, which, as provided by a Louisiana statute, was conditioned in effect that said principal shall make prompt payment of all claims arising and accruing to any person during the term of said bond, by virtue of any policy or policies of described classes of insurance issued by it during the term [fol. 120] of the bond upon the life or person of any citizen of the State of Louisiana. That bond was given to enable the principal in it to do business in Louisiana, and is herein referred to as the qualifying bond. On June 6, 1931, the appellee filed in the court below a bill of interpleader under the statute 28 USCA, §41 (26). That bill contained allegations to the following effect: The business of said Lumberman's Reciprocal Association was chiefly the writing of workmen's compensation insurance. On July 31, 1930, a named Texas court appointed a named person Receiver of said Association, and said Association is still in the hands of said Receiver. Claims against said Association's qualifying bond are far in excess of the amount of said bond. Some of the claimants now are and at all times mentioned in the bill were citizens of named states other than Louisiana, and some of these claimants now are and at all times mentioned in the bill were citizens of the State of Louisiana. Two suits against petitioner (appellee) on said qualifying bond are pending in Louisiana State Courts. In one of these suits, brought by Etienne Dugas (appellant), judgment in favor of the plaintiff therein was rendered on April 14, 1931, requiring the defendant therein (the appellee) to pay to appellant $20.00 a week for a period not to exceed three hundred weeks. Appellant appealed from the judgment, giving a suspensive appeal bond in the sum of $10,000.00, the New York Casualty Company being the surety in that bond, which contain the following condition: "Now the condition of the above obligation is such that the above bounden American Surety Company of New York shall prosecute diligently its appeal, and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate, real or personal, if it be cast in the appeal, otherwise that the said New York Casualty Company, State of New York, shall be liable in its [fol. 121] place." Appellee disclaimed any interest in the amount of its qualifying bond, except to pay the amount of the same to persons lawfuly entitled thereto, and ap-

pellee prayed permission to pay into court the amount of its said bond for distribution among those lawfully entitled thereto after the payment of all lawful costs. A list of claims against said bond was attached to the bill. That bill contained prayers: That appellee be authorized and directed to deposit in the Registry of the court, the sum of $20,000.00; that appellant and other claimants be cited to interplead and settle between themselves their rights or claims to the amount of said bond; that appellants and other defendants in said bill be restrained and enjoined from instituting or prosecuting in any State Court, or in any other Federal Court, any suit on account of any right or claim growing out of said bond; and that appellee be released from all further liability on account of said bond, upon a determination being had as to the amount due thereon, and upon the payment by appellee of a sum, if any be found due thereon, over and above the fund paid into the Registry of the Court. Pursuant to an order made by the court upon the filing of that bill appellee paid into the Registry of the Court the sum of $20,000.00. Appellant appeared in that cause, filed an exception to the bill of complaint therein, ap lea in bar, and an answer. On September 19, 1932, the court entered a decree in that cause which adjudged: That appellee, by the deposit of $20,000.00 made in that cause, complied with all obligations under or on account of said qualifying bond, or under or on account of any similar previous bonds, and that appellee "be and it is hereby released and discharged from any and all further liability on account of said bonds or any of them"; and "that all defendants hereby be and they hereby are perpetually restrained and enjoined from instituting or prosecuting in any State Court, or in any other Federal Court, [fol. 122] any suit against said American Surety Company of New York on account of any right or claim growing out of said bond, or any similar previous bond." There was no appeal from the final decree rendered in the interpleader suit, and that decree remained in full force and effect. By a provision of that decree a Special Master was appointed to determine the manner in which the balance of the fund remaining on deposit in the registry of the Court, after deducting the amounts of costs and attorney's fees allowed by the court, shall be distributed between the defendants in the cause. The Special Master's report showed that the

claim of the appellant was allowed in the sum of $4160.68, and that appellant's pro rata share of the fund in court for distribution among the several claimants was $1141.29. Counsel for the various claimants, including appellant, entered into a written stipulation acquiescing in that report of the Special Master; whereupon the court confirmed that report, and ordered the distribution of the fund in court in accordance with that report.

On March 7, 1934, appellant filed in a Louisiana State court a suit against the New York Casualty Company, the surety on the above mentioned appeal bond given by appellee, seeking the recovery of the sum of $3,019.39, for an alleged breach of the condition of that bond, that sum being the amount, $4160.68, of appellant's claim allowed by the Special Master and the sum, $1141.29, received by the appellant under the court's order of distribution. On March 14, 1934, appellant filed an amended and supplemental petition reducing the amount claimed by him in said suit to $2,999.00. The court in which that suit was brought maintained an exception of prematurity, and dismissed that suit. From that judgment appellant appealed to the Supreme Court of Louisiana, which court on January 7, 1935, annulled the judgment appealed from, over-ruled the plea of prematurity, and remanded the case for further proceedings. On January 29, 1935, appellee filed a supplemental [fol. 123] petition in the above mentioned interpleader suit. That pleading recited what had occurred in the interpleader suit, and in the suit brought by appellant against the New York Casualty Company. That supplementary petition named as parties defendant appellant and Maurice J. Hartson, Civil Sheriff of the Parish of Orleans, State of Louisiana. That pleading alleged: "Maurice J. Hartson, a resident of this Parish and State, was and is Civil Sheriff of the Parish of Orleans, State of Louisiana, and as such is the official charged with the duty of executing the decrees and orders of the Civil District Court for the said Parish, and for that reason plaintiff desires that he be made a party hereto in order fully to guarantee the effectiveness of the relief herein sought". By exception interposed by appellant the right of appellee to maintain the supplementary petition was challenged on the grounds that the court ceased to have jurisdiction to make further orders or decrees in the

interpleader suit upon the expiration of the term at which the final decree therein was rendered, on the ground that the amount involved is less than $3,000.00; and on the ground that the injunction sought was forbidden by Statute, 28 USCA, §379. After those exceptions were over-ruled appellant filed an answer on the merits. On a submission of the cause on the supplemental petition and on the above mentioned decree of September 19, 1932, the Court ordered the issuance of a preliminary injunction as prayed for in said supplemental petition. By stipulation of counsel the cause was submitted for final decree on said supplemental petition, upon the pleadings filed by appellant, and upon the same evidence as was produced at the hearing of the application for a preliminary injunction applied for in said supplemental petition, and allowed by the court. Thereupon the court made findings of facts and conclusions of law, and rendered a decree which adjudged: "That an injunction issue herein permanently enjoining and restraining Etienne Dugas, his attorneys, agents and represent-[fol. 124] atives from taking any steps to institute, prosecute or execute any judgment in any suit or proceeding (and in particular in proceeding entitled Etienne Dugas vs. New York Casualty Company, No. 206,399 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana) in any State Court or in any other Federal Court, on any claim growing out of or connected with the appeal bond executed by New York Casualty Company as surety and American Surety Company of New York as principal in the sum of Ten Thousand Dollars ($10,000.00) and filed in connection with the appeal taken by American Surety Company of New York from judgment dated April 14, 1931, in suit entitled Etienne Dugas vs. American Surety Company of New York, No. 188,642 of the docket of the Civil District Court for the Parish of Orleans, State of Louisiana; and permanently enjoining and restraining Maurice J. Hartson, Civil Sheriff for the Parish of Orleans, his successors in office, agents, servants, employees and representatives from executing or taking any action to execute any judgment, decree or order which may be issued against New York Casualty Company in suit of Etienne Dugas against New York Casualty Company, which is hereinabove mentioned." Etienne Dugas appealed from that decree.

The Appellee filed a motion to dismiss the appeal because Maurice J. Hartson, Civil Sheriff of the Parish of Orleans, State of Louisiana, did not join therein, and there were no summons and severance as to him. Hartson in no way resisted the supplemental bill, and it is quite apparent that he has no legal interest in maintaining or reversing the decree appealed from. This being so, he was not a necessary party to the appeal. Amadeo v. Northern Assurance Co., 201 U. S. 194; Basket v. Hassell, 107 U. S. 602; National Surety Co. v. LeFlore County, Miss., 262 Fed. §25; Orleans-Kenner Electric Ry. Co. v. Dunbar, 218 Fed. 344; 3 C. J. 1017. The motion to dismiss the appeal is denied.

[fol. 125] The proceeding instituted by the supplementary petition was ancillary to the original interpleader suit, the object sought being the effectuation of the final decree rendered in that suit. That proceeding being ancillary and dependent, the court had jurisdiction by reason of its jurisdiction of the interpleader suit. That proceeding was maintainable without regard to the citizenship of the parties or the amount involved, and the court in that proceeding, acting to enforce or protect its decree in the interpleader suit, was empowered, notwithstanding the statute forbidding, except in specified cases, the Federal courts by injunction to stay proceedings in any court of a State, to stay suits and proceedings in State Courts which would have the effect of defeating or interfering with the court's jurisdiction. Local Loan Co. v. Hunt, 292 U. S. 234; Root v. Woolworth, 150 U. S. 400; Wilson v. Alexander, 276 Fed. 875. The manifest purpose of the final decree rendered in the interpleader suit was to grant the relief authorized by the statute providing for such suits (28 U. S. C. A. § 41 (26), by adjudging that appellee has, by the deposit of $20,000.00 made in that cause, complied with all its obligations under or on account of said qualifying bond, and that appellee be discharged from further liability to the appellant and other parties defendant to that suit. The final decree rendered in the interpleader suit established and concluded the right of the appellee to be discharged from all further liability under the qualifying bond upon which it was the surety, and to terminate any right of the appellant to enforce against the appellee any asserted liability based upon or growing out of that bond. The right established in favor of the appellee is inconsistent with appellant having

the right to enforce against the New York Casualty Company, the surety on the appeal bond given in the suit in which judgment was rendered against appellee for the full amount of appellant's claim for workman's compensation, with the result enabling the New York Casualty Company [fol. 126] to charge the appellee, its principal, with liability for the amount adjudged against the surety. That appeal bond was an incident of the suit brought by appellant against appellee for the full amount of the former's claim, and was a means of effecting the enforcement of that claim. The liability under that appeal bond was a liability on account of the qualifying bond, within the meaning of the provision of the decree in the interpleader suit releasing and discharging the appellee from any and all further liability on account of the qualifying bond. The decree in the interpleader suit had the effect of extinguishing appellee's liability on the appeal bond given in the suit the further prosecution of which was enjoined. The liability of the surety on that appeal bond was extinguished by the discharge of the principal from all liability thereon. Cage's Executors v. Cassidy, 23 How. 109, 116; United States v. Chouteau, 102 U. S. 603; Veach v. Rice, 131 U. S. 293. The court's determination of the effect of its decree in the interpleader suit cannot be controlled by a decision of the Supreme Court of Louisiana in a litigation which arose after that decree was rendered. It would be unconscionable to permit the enforcement of the asserted liability of the surety on the appeal bond in question after the principal in that bond had been discharged from all liability on that bond. A conclusion of law made by the Court stated: "The attempt to collect from the surety on said appeal bond is an indirect method of proceeding against the principal on said bond, American Surety Company, of New York, which it was the intention and purpose of the order and decree herein of September 19, 1932, to forbid." It was appropriate for the court to prevent the full enjoyment by a beneficiary of its final decree of the right established by that decree in favor of such beneficiary from being interfered with or impaired by the prosecution of a suit against the beneficiary's surety to enforce [fol. 127] an asserted liability of the surety, which was extinguished by the discharge of the beneficiary's liability.

The decree appealed from did not go beyond giving due effect to the final decree rendered in the interpleader suit, by protecting the rights of the appellee established by that final decree, and preventing the jurisdiction exercised by the court in rendering that final decree from being defeated or interfered with. The decree under review is

Affirmed.

SIBLEY, Circuit Judge, Dissenting:

I agree that this appeal ought not to be dismissed for want of parties, and that the District Court had dependent jurisdiction to inquire into a violation of its prior injunctive decree. I think it erred in holding that the suit of Dugas against New York Casualty Company on the State court appeal bond is any violation of that decree. The decree is that American Surety Company by paying into court $20,000 had "complied with all its obligations under its bond dated Feb. 12, 1930, as surety for Lumbermen's Reciprocal Association or any *similar previous* bond", and "that all defendants be and they are hereby perpetually restrained and enjoined from instituting or prosecuting in any State court or any other federal court any suit against American Surety Company on account of any right or claim growing out of *said bond* or any *similar previous bond.*" The injunction does not cover a suit on the *subsequent* appeal bond which American Surety Company had given as principal, with New York Casualty Company as surety. Such a bond is altogether dissimilar from the bonds mentioned in the decree. Dugas had pleaded the pendency of his appeal secured by New York Casualty Company's bond as a bar to the interpleader sought by the American Surety Company, but he did not [fol. 128] seek to establish in that suit his rights under that bond, New York Casualty Company being no party to the interpleader. The court properly held that the matter he pleaded was no bar, and that interpleader was proper, and ordered all claimants to set up their claims against the $20,000 bond. Dugas rightly interpreted this as excluding from consideration his claim on this appeal bond, and he proceeded as he should have done for the protection of the surety on that bond to realize whatever was realizable as a general claimant from the fund before the court, and

he collected $1141.21. This he credited on the liability under the appeal bond, and then in a State court sued the surety, New York Casualty Company, for the balance of his claim, alleging that the bringing of the interpleader suit was an abandonment of the appeal pending in the State court and a breach of the appeal bond. The New York Casualty Company got a judgment in the trial court that its bond had not yet been breached and that the suit was premature. On appeal the Supreme Court of Louisiana carefully interpreted the bond of the New York Casualty Company and the State statute under which it was given, and held that the bond was breached and that a cause of action on it had arisen. Dugas vs. New York Casualty Co., — La. —, 159 So. 572. At this point the American Surety Company, which is no party to the litigation in the State court, obtained in the federal court the supplementary injunction under review.

The Supreme Court of Louisiana said in part:

"The United States court did not in its decree undertake to destroy or limit Dugas' right of action against New York Casualty Company as surety on the appeal bond which was given to suspend the execution and to secure the payment of the judgment rendered by the District Court for the Parish of Orleans. We must bear in mind that this suit is not founded on the qualifying bond of $20,000 which the American Surety Company signed as surety [fol. 129] for Lumbermen's Reciprocal Association, but is founded upon the suspensive appeal bond for $10,000 which the New York Casualty Company signed as surety for the American Surety Company. The $20,000 qualifying bond passed out of the case when the American Surety Company abandoned its appeal in that suit on that bond, and thereby rendered the New York Casualty Company liable as surety on the $10,000 appeal bond". * * * "It is true that if the New York Casualty Company has to pay, and if the American Surety Company has to reimburse the New York Casualty Company, the American Surety Company will have paid out more than the amount of the $20,000 qualifying bond. But that happened in Mrs. Brim's case and in the Lyon Lumber Company case, (American Surety Co. vs. Brim, et al, 176 La. 867, 147 So. 18), as a consequence of the failure of the American Surety Company to provoke an interpleader suit until plaintiff in each of those

cases had obtained a final judgment against the American Surety Company (on suspensive appeal); and by the same token it may happen in this case."

The construction and effect of this appeal bond and the State statute under which it was given are settled for the federal courts by the decision of the Supreme Court of Louisiana. The effect of the federal injunctive decree is not thus settled, but I think the holding just quoted is correct. Had American Surety Company when Dugas obtained judgment against it at once filed its interpleader, all its obligations to Dugas would have been ended. But it saw fit to appeal, and to arrest execution of the general judgment against it by giving another obligation for its payment. The consideration of the appeal bond was the delay to be obtained. That consideration was enjoyed, and [fol. 130] the bond as a collateral obligation stands good according to its terms. According to those terms the bond has been breached, and the liability on it has become absolute. The full penalty of $10,000 is not recoverable, but only the unpaid balance of the judgment. For that purpose only is the judgment involved in the action on the bond. The judgment, which indeed represents a liability on the $20,000 bond, is not thereby enforced, but is used only to measure the damages occasioned by the breaching of the $10,000 bond. Limiting the liability on the $20,000 bond has no effect to limit the liability on the $10,000 bond which is otherwise conditioned. It is very clear to me that such a suspensive appeal bond would stand good as a security if an appellant corporation should, pending appeal, go into bankruptcy; or be dissolved; or if, being a shipowner, it should begin limitation of liability proceedings under the federal statute. Such a thing has happened here. If American Surety Company instead of giving this bond, had in order to obtain the delay pledged its property to Dugas, the pledge would surely stand good. American Surety Companyy would in that case lose additionally this property, but only because it had pledged it. It loses no more by reason of the surety's probable right of recourse if this bond is enforced against New York Casualty Company. The bond is the price of a delay which was enjoyed. I think the District Court erred in interfering with its enforcement in the State court.

[fol. 131] JUDGMENT

Extract from the Minutes of April 9th, 1936

No. 7961

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appelant, Etienne Dugas, and the surety on the appeal bond herein, Globe Indemnity Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, dissenting."

[fol. 132] MOTION AND ORDER EXTENDING TIME TO FILE REHEARING—Filed April 29th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7961

ETIENNE DUGAS, Appellant,

versus

AMERICAN SURETY COMPANY OF NEW YORK, Appellee

On motion of I. E. Uzzo and James J. Landry, herein appearing on behalf of the appellant in the above numbered and entitled cause, and on suggestion to the court that mover has through April 30th, 1935, within which to file

his application for rehearing and brief. That it would be impossible to file said application and brief within the time above specified and that mover desires a five days' extension of time within which to file same.

It is ordered by the court that mover be granted an extension of five days, as time in which to file his application for a rehearing and brief, herein.

New Orleans, April 29th, 1936.

(Signed) Rufus E. Foster, United States Circuit Judge. (Signed) I. E. Uzzo & James J. Landry, Attys. for Appellant.

[fol. 133] ORDER DENYING REHEARING

Extract from the Minutes of June 5th, 1936

No. 7961

ETIENNE DUGAS

versus

AMERICAN SURETY COMPANY OF NEW YORK

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 134] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 118 to 137 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7961, wherein Etienne Dugas is appellant, and American Surety Company of New York is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 117 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 27th day of August, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 135] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 19, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.